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Ontario Royal Commission inquiry into labour disputes

Audrey
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v. 2 Jan. 1951

(48)

ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

5634

HEARINGS HELD AT
Toronto, Ont.

VOL. NO.

DATE

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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

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- and -

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IN THE MATTER OF an Inquiry
Into Labour Disputes.

6

7

BEFORE: The Honourable Ivan C.
Rand, Commissioner, at
123 Edward Street,
Toronto, Ontario, on
Thursday, January 12,
1967.

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E. Marshall Pollock

Counsel to the Commission

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APPEARANCE:

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J. C. Adams, Q.C.

General Counsel - Central
Ontario Industrial Relations
Institute

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Nethercut & Young Limited, Official Reporters,
48 York Street, Toronto 1, Ontario, per:
F. J. Nethercut and R. J. Young.

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Toronto, Ontario
Thursday, January
12, 1967.

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2 ---On commencing at ten o'clock a.m.

3

4 MR. ADAMS: Mr. Chairman, I should
5 explain that while I represent an organization this
6 brief is not intended to be necessarily the views of
7 the organization. It is rather a peculiar organization,
8 a service group which functions in the field of
9 industrial relations to assist employers. It is a non-
10 profit organization to which they belong and from which
11 they get services. For some 25 years I have been the
12 head of it and the views in this brief are my views
13 which may or may not be endorsed entirely by the members.

14

15 On a previous occasion in the course
16 of presenting a similar brief I attempted to do as most
17 organizations do, that is, seek the views of the
18 members and try to distill them into a coherent
19 presentation. I found that it did not work because it
20 is impossible to reconcile all the views that hundreds
21 of people have and so even on that occasion which was
22 to a Select Committee of the Legislature I ended up by
23 putting forward my personal views which were not in any
24 way, I may say, questioned by members of the organization
25 and I am sorry to say did not receive too much
26 endorsement by that Select Committee, at least so far
27 as their report was concerned.

28

29 It is, however, an organization of
30 approximately 480 companies, mostly in Ontario, who
employ in the aggregate I would estimate about 125,000
people. It has a Board of Directors presently of twelve



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1 drawn from many segments of industry.

2 THE COMMISSIONER: At that point could
3 you give us some idea of the size of operations of the
4 majority of these particular companies, or industries?
5 Could you give us, say, the maximum employed by any one
6 company?

7 MR. ADAMS: I think we would have two
8 or three companies who would employ over 15,000 people.
9 I recall one I am sure has 18,000.

10 THE COMMISSIONER: Is that centered
11 around one establishment, or is it spread over the
12 province?

13 MR. ADAMS: That is a company in
14 Toronto with approximately 18,000 people. Most of our
15 larger industrial manufacturing institutions belong or
16 have belonged. Like any other organization we have
17 members who come and go, some remain forever for various
18 reasons.

19 THE COMMISSIONER: The only reason for
20 my asking it is this: I think it has already been
21 indicated that in some respects and for certain
22 purposes size makes a considerable difference in the
23 effect, say, of economic action.

24 MR. ADAMS: Yes. However, our function
25 is principally to give advice and assistance in their
26 dealings with their employees. Whether or not they
27 are organized, of course, they are about 99% organized
28 or in about 99% of the cases. So we have established
29 what we call a panel of experts who assist companies
30 in all stages of collective bargaining, commencing, of



1 course, with any proceedings before the Labour Relations
2 Board, and that is the state of affairs when we
3 commence to service them. We play a rather important
4 role after the contract has been negotiated. We are
5 frequently consulted as to how to deal with a particular
6 grievance of an employee or if that is not the answer
7 we represent the company quite frequently in arbitration
8 proceedings. I may say we have had our share of
9 troubles. Sometimes our company clients do have strikes
10 and any actual experience that I have had with strikes
11 arises out of those incidents.

12 If you have read the brief, I am
13 afraid there is little that I could accomplish by para-
14 phrasing it or rereading it to you. I would direct
15 your attention to this circumstance, that I have not
16 tried to cover the whole of the area which appears to
17 fall within the ambit of your investigation. I have
18 concentrated on what I consider to be the outstanding
19 difficulties. In the first place I would assign the
20 problem which arises out of what I think is a deplorable
21 lack of enforcement policy on the part of governments
22 with respect to the enforcement of any labour law which
23 they have enacted. This, I think, has contributed to a
24 state of affairs in which we have in the labour ranks
25 at least general disrespect for not only labour law but
26 any law.

27 The second important aspect is, of
28 course, the part of collective bargaining which becomes
29 an industrial dispute in terms of a strike and the
30 picketing which usually accompanies such an incident.



1 In my consideration of this problem, because I am well
2 aware that we have had certain demonstrations, certain
3 instances of unlawful conduct which people have sought
4 to remedy by the use of injunctions, this has led to
5 demonstrations against injunctions, protests and
6 unfortunately in at least one case to convictions for
7 contempt of court.

8 It seemed to me that there must be
9 some basic misunderstanding on the part of the leaders,
10 the spokesmen in the labour movement in order that such
11 a thing could take place and I have attempted, perhaps
12 too briefly in this submission, to draw attention to the
13 fact that the action of striking --- the action of
14 striking is an essential part of collective bargaining.
15 It is not something that takes place outside the orbit
16 of collective bargaining and I direct your attention to
17 the quotation that I have on the bottom of page 2 in
18 which Professor Finkleman stated very clearly:

19 "Indeed the calling of a strike
20 or the instituting of a lock-out
21 is not an alternative or a
22 substitute for bargaining, it is
23 in its very essence part and
24 parcel of the bargaining process
25 and has been so recognized since
26 the latter part of the nineteenth
27 century."

28 Unfortunately, that view is not very clearly
29 reflected in the Ontario Labour Relations Act because
30 here we have a statute which, after providing some



1 machinery for disposing of claims by unions that they
2 should be authorized or certified and entitled to
3 represent people, the meat of the legislation is that
4 following this there must be bargaining in good faith
5 between the union and the employer who is concerned.
6 It quite definitely says bargaining in good faith by
7 both parties. Now, how can we make that the cornerstone
8 of a statute and at the same time ignore completely the
9 action of striking which takes place in the course of
10 this bargaining in good faith? And when I say "ignore
11 completely", I am quite conscious that the statute
12 does prohibit striking during the early stages of this
13 bargaining and then there comes a point following
14 conciliation at which the strike is permitted and I use
15 that word advisedly. It is not authorized, it is not
16 sanctioned, it is not made a legal or statutory right;
17 it is merely permitting something which they had the
18 right to do before, but which has been temporarily
19 suspended.

20 Having got to that stage the Labour
21 Relations Act is completely silent as to what is acting
22 in good faith on the part of a striker or on the
23 part of the employer who is resisting the striker.
24 But all strikes come to an end and eventually these
25 parties come back and bargain some more and afterwards
26 it resolves itself and then the statute seems to pick up
27 the situation again and say, "Now you must bargain in
28 good faith". My proposition is that if we have imposed
29 the obligation to bargain in good faith on the parties
30 at the beginning and if it continues through until a



1 contract is reached or until they voluntarily or
2 mutually agree to cease trying, then that obligation
3 continues throughout the strike and it is a standard
4 which must apply to the conduct of both the employer
5 and the employee during this strike interval. Looked
6 at in that way I think first of all it provides ample
7 justification for the government intervening in the
8 strike situations and prescribing acceptable courses of
9 conduct. I have particular reference here to the
10 aspect of striking which we call picketing.

11 Picketing has from the beginning of
12 strikes, I suppose, been a feature that has usually
13 accompanied them. In the very early days when people
14 were on strike --- this goes back long before we had
15 any labour legislation as such in any jurisdiction ---
16 they were not very popular in terms of public opinion.
17 It was difficult for them to get any sort of notice
18 by whatever kind of newspapers we may have had in those
19 days. They were frowned upon, at common law they were
20 frequently considered as criminals ---

21 THE COMMISSIONER: You are speaking not
22 only of the experience of Canada?

23 MR. ADAMS: Oh, yes, I am going back
24 to the origin of striking in England. And so the
25 device of picketing in order to appeal to the public
26 and make the public aware of what they were doing was
27 resorted to. In due course somewhere about 1874 or
28 1875, I think it was, we had some statutory recognition
29 of this situation in one of the statutes ---- the Labour
30 Disputes Act or the Trade Union Act, I just can't think



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1 what it was.

2 MR. POLLOCK: In what year was that?

3 MR. ADAMS: About 1875.

4 THE COMMISSIONER: It was to do with
5 public protection --- 1871 to 1875.

6 MR. ADAMS: Yes. It was substantially
7 the same words as we have in our Criminal Code,
8 subsection 2 of Section 366. That is what would otherwise
9 have been a crime, namely, watching and besetting was
10 exempted, in order to permit them to use this device
11 for the purpose of obtaining information or communicating
12 information. I believe in England the words "and
13 peacefully persuading" were added.

14 I suggest in modern times when we have
15 no longer anything that could be remotely described as
16 a hostile press in terms of trade union activity, when
17 in fact every action of a trade union which is
18 newsworthy is given prominent treatment; when we have
19 the modern news media such as television and radio and
20 sound trucks and blare horns, or whatever they are
21 called --- loudspeakers --- it is incongruous for them
22 to still use this device of picketing as a means of
23 communicating information. I suggest that it is
24 completely obsolete as a means of communicating
25 information.

26 THE COMMISSIONER: You would agree
27 that communication has as its ultimate purpose
28 persuasion towards sympathy or support?

29 MR. ADAMS: This could be. Naturally,
30 if the strike were conducted in secrecy the public would



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1 not be concerned and could not really give its support.
2 But this is not the case nowadays.

3 MR. POLLOCK: If I could interrupt you
4 at this stage, do you want us to wait until you have
5 finished and then ask questions?

6 MR. ADAMS: No, proceed in any way
7 you wish.

8 MR. POLLOCK: Just on this question of
9 advertising or communication of information, you say it
10 is obsolete. I am not an advertising executive or
11 account executive, but it seems to me there is a lot of
12 information placed in the shop window of a sale, or
13 local communication of information at the place of
14 purchase, that some people spend a lot of money on and
15 obviously must think it has some effect on the people
16 passing by as to communicating an idea. Certainly in
17 addition to that they advertise in newspapers and take
18 advantage of the public means of communication. Isn't
19 this really in some measure what picketing does on the
20 site?

21 MR. ADAMS: Well, it obviously tells
22 all and sundry that the plant has been struck, but if
23 that is the purpose, then a few people with placards
24 or a few permanently affixed notices will accomplish
25 the same purpose.

26 MR. POLLOCK: It will accomplish that
27 particular purpose?

28 MR. ADAMS: Yes. I never could quite
29 grasp what kind of information they wanted to obtain.
30 I suppose one could visualize that they may be concerned



1 as to whether or not the employer has engaged a
2 replacement, and if so, how many, perhaps the identify
3 of them also.

4 THE COMMISSIONER: I suppose there
5 were strikes in England in the early days in coal mines,
6 and I fancy the inclination of the strikers would be
7 to go back to the pit head or the entrance to the mine
8 to see what was happening. They were looking upon a
9 place in which they were normally engaged but in which
10 the work was stopped, and it was part curiosity, part
11 an expression of annoyance, wasn't it?

12 MR. ADAMS: Originally I would not
13 know what the purpose was, but if one is prepared to
14 assume that it was reasonable, justified, that there
15 was information which they needed such as how many men
16 are going to work, perhaps in those days they needed
17 some representatives to see. Certainly to prevent
18 people from going to work in ignorance of the fact that
19 there was a strike, they would need somebody there to
20 say so. Now, if these are the purposes, and so far as
21 our laws are concerned, they are the only two purposes
22 ever indicated as being the legitimate objectives of
23 picketing, I think that picketing for either of these
24 purposes is now obsolete and that we can easily devise
25 means of giving them all the information they need and
26 communicating all the information that they are
27 entitled to communicate without any picket line at all.
28 In the course of my submission here I have suggested
29 that all strikes should be prohibited unless and until
30 they go to an appropriate tribunal and get permission to



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1 carry on the strike, and as part of that permission
2 they can be told whether or not any picketing will be
3 permitted, and if some is justified in that particular
4 case it can be limited, but generally the authorization
5 to carry on the strike could include an order that the
6 premises be placarded by the administrator of the Act
7 announcing to all and sundry that this is a struck
8 plant. If there is any information that these strikers
9 need as to what is going on in that plant, it can be
10 obtained by the administrator of the Act and communicated
11 to them and to the public.

12 THE COMMISSIONER: What would you say
13 as to the legitimacy or non-legitimacy of the use of
14 that picket line for the purpose of generating and
15 maintaining the spirit of the strikers, the spirit of,
16 you might say, indignation, or the will to continue?

17 MR. ADAMS: Naturally, I am not a
18 novice in these matters and I am quite aware that the
19 real purpose of the picket line today has more to do
20 with maintaining the morale of the group and their
21 cohesion and their determination to persist in the
22 decision they made in the first place than for any other
23 purpose.

24 On the other hand, what we must
25 seriously be concerned with is, is this a legitimate
26 action? Because once you consider that the employer
27 and the representative of his employees, the union --
28 and I think here I must interpolate that we must never
29 forget that this union is just an agent of those
30 employees --- they commence to bargain and they are



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1 acting in good faith, we presume, and here we have a
2 situation where today you are sitting across a table
3 and as an employer you are putting forth arguments, you
4 are trying to be as persuasive as you can to get your
5 union representatives to see your point of view, and
6 necessarily you are not agreeing with everything they
7 have been contending for or else the bargaining would
8 be finished. Tomorrow there is a picket line. Now,
9 the whole philosophy of the trade union movement seems
10 to be that once the picket line is put on there is no
11 longer any right to resist by the employer: He must
12 accept the inevitable; he is not entitled to resist
13 any longer, and all innocent bystanders, the public,
14 are also expected to endorse the action of the strikers.
15 Impossible as this may be, you can never hope to know
16 what the issues in a strike are unless you are one of
17 the participants. That is, completely. Yet, you are
18 supposed to form an opinion, you are supposed to take
19 sides merely because that picket line is in being.

20 It seems to me that an employer's
21 right to resist as part of his good faith bargaining
22 is something that has got to be preserved, otherwise
23 you can't have bargaining.

24 THE COMMISSIONER: Would you mind
25 stating what you consider the elements of good faith
26 in bargaining as it is actually carried on? What are
27 the assumptions underlying it, first?

28 MR. ADAMS: First I would answer that
29 by saying that I don't think you can define it with
30 sufficient precision to make it completely applicable to



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1 all situations. A great deal depends on the nature of
2 the issue.

3 THE COMMISSIONER: Would you put
4 honesty in statement of fact as one essential?

5 MR. ADAMS: Yes, but I would qualify
6 that by giving both parties the latitude which one
7 ordinarily finds in the marketplace; that is, if a
8 person is selling you goods, he does not necessarily
9 give you the truth ---- he does a little puffing and a
10 little advertising.

11 THE COMMISSIONER: That is true.

12 MR. ADAMS: And I think this sort of
13 thing is open to the parties in bargaining. If you are
14 haggling with a merchant in a bazaar in Egypt, let us
15 say, you do not necessarily come to the honest price
16 the first time you discuss it. There is a little
17 haggling back and forth. The very nature of the
18 transaction is such that you must give the parties a
19 little room for gradually coming together.

20 Now, this is perfectly well understood.
21 I think, on both sides, with some rather unfortunate
22 results.

23 MR. POLLOCK: Just let me ask you this:
24 It may be understood, but is that what the Legislature
25 means by bargaining in good faith --- puffing your side
26 and misrepresenting your position to hope to get the
27 other side to agree to a position that is beneficial
28 or advantageous to you? Doesn't that good faith mean
29 opening it up? I think in contracts of insurance,
30 for example, there is a question of uberrimae fides, or



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1 the utmost faith, in which the parties are supposed to
2 disclose everything. Is this the type of thing that is
3 contemplated or, as was suggested yesterday, is it just
4 a dignified way of saying horse-trading?

5 MR. ADAMS: It really has its own stan-
6 dards. I don't think that you can expect either a union or
7 an employer to come to the first session of bargaining
8 and expose to the last detail every position which that
9 party is going to take. I am talking now about such things
10 as a wage rate or something which costs money and so on.
11 But I think if you were to apply the test of good faith,
12 however, to the question of what facts relevant to this
13 bargaining are there in your possession which you should
14 have or in your possession which the other side should
15 have I think it requires the disclosure of facts.

16 THE COMMISSIONER: That would mean
17 that if, for instance, the employer said, "I can't
18 afford this" he should be willing to show his books?

19 MR. ADAMS: Yes, it could mean that.
20 Now, I throw a word of caution out. It is very rare
21 that an employer takes the position that he can't afford
22 it. He may say that, but that must be understood in
23 this sense, that in my judgment "my business cannot
24 operate efficiently if I do this" and in that sense I
25 can't afford it. It is not a question of just not being
26 able to write the cheque necessary to cover the payroll.
27 That sometimes can be done by drawing on the reserves
28 or even by borrowing from the bank and you may have the
29 ability to raise the money in that way, but it may be a
30 very foolish business operation to carry on that way.



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THE COMMISSIONER: So far as that

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disclosure is concerned do the words "good faith" add anything to bargaining?

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MR. ADAMS: Not very much really.

5

Bargaining is really not comprehensible unless people act in good faith.

7

THE COMMISSIONER: Yes, I should think

8

so.

9

MR. ADAMS: But it is perhaps

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easier to give some instance of bad faith and the most commonly quoted one is where in the course of bargaining you say to the union, "All right, I will make you an offer --- fifteen cents an hour across the board", let us say, for example, and the union people go away and think about it and come back and say, "We have decided to accept your offer" and the employer says, "Well, too bad I really wasn't serious, I have changed my mind".

18

THE COMMISSIONER: Do you think that

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sometimes occurs?

20

MR. ADAMS: Oh, yes, it has occurred.

21

And I think that that would be an evidence of bad faith.

22

On the other hand, where the unions

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says, "All right, we will moderate our position. If

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you will give us fifteen cents an hour we will accept

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it", and so you agree, then they come back and say,

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"Sorry, it won't work". There is a facet here that

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requires some comment. In recent times there have been

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situations in which a union apparently quite honestly and

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in good faith has accepted a proposition and then has

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gone back for this superdemocratic procedure which they



1 call ratification and find that it is not ratified and
2 so they must return and say to the employer, "I am sorry,
3 but what we agreed to do the membership have rejected".

4 MR. POLLOCK: That arises out of your
5 definition where you emphasize that the union is an
6 agent and that is the principle of agency that there
7 should be ratification.

8 MR. ADAMS: Well, they act as agents
9 to the nth degree when it suits them. I think it is an
10 unfortunate development of bargaining, but one which I
11 have not any real answer for, and that is that very
12 seldom nowadays do you find a union bargaining committee
13 which will take the responsibility for making a settle-
14 ment without going back to the membership for
15 ratification. This was not the original concept of
16 bargaining. In the beginning most unions acted pretty
17 much like on the principle of cabinet responsibility;
18 they had their membership behind them, they were the
19 chosen committee and what you could persuade that
20 committee was a deal which they would accept and
21 ratification was not always even attempted. It was just
22 assumed.

23 THE COMMISSIONER: Has this focal
24 authority ever been found to lie in the constitution or
25 bylaws of the union? It depends upon what authority
26 this group has.

27 MR. ADAMS: This is true. I think
28 that this ratification by rank and file accompanied the
29 growth of industrial unionism as distinguished from craft
30 unions and it has become, unfortunately, almost a standard



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1 procedure.

2 MR. POLLOCK: Is that partially
3 a product of the type of bargaining which you alluded
4 to earlier of not putting your whole position initially
5 and taking it in steps --- "We will offer you this",
6 "We will try that on" and then they go back and try it
7 and they know when they come back to bargain again the
8 employer will go up a nickel rather than approach the
9 strike deadline? Doesn't part of the responsibility lie
10 with employers who will continually at each step of the
11 bargaining increase their offer, it is not a firm offer,
12 it is not a take-it-or-leave-it offer at a certain
13 level?

14 MR. ADAMS: Of course, you don't
15 assume that that is normal conduct of employers at
16 bargaining. I admit many of them do it. I don't
17 recommend it myself as a practice. I think that most
18 experienced employers have learned that it is best
19 to first sit and listen and make sure you understand
20 fully what the union wants, what they really want in
21 spite of what they are saying, try to assess it first
22 fairly and then come as close to that position as you
23 can in your first offer even if it is your last one.
24 I think you develop more sincerity and more respect at
25 least in terms of future bargaining if not in terms of
26 the present one. Someone who haggles and gives a
27 nickel more today than he did yesterday is only creating
28 the impression that he still hasn't got to the end of
29 the road and how can you blame the union for saying,
30 "There is still more there, let us find some way of



1 getting at it"?

2 One of the best bargainers on the employer's
3 side that I have ever encountered is a gentleman who is
4 now dead, unfortunately he was killed in an automobile
5 accident. He owned or controlled about sixteen
6 companies, one of which was in Canada, and he had developed
7 his own technique of bargaining which, for him, was
8 quite successful. He bargained personally without
9 intermediaries and without any fanfare. He was the head
10 of the company and he met his union and he said, "Now,
11 gentlemen, there are your proposals, I have read them
12 and I think I understand them, but I want to give you
13 all the time you want to take to impress me with your
14 validity, your honesty and any explanation you want to
15 give me." He let them talk as long as they wanted to
16 talk, even if this took days. When they had finished
17 he said, "Now are you finished? Are you ready now for
18 me to talk?", and they would eventually, of course, say,
19 "Yes". He said, "Now, this is what I am willing to do",
20 and he put forward a very sincere position dealing with
21 each issue and then he would say, "Now, that is it,
22 gentlemen, if you would like to accept it, of course,
23 the papers will be drawn up. If you don't wish to
24 accept it, you may strike". And he had less difficulty
25 getting to agreement than any employer I have ever
26 counselled.

27 I can't recommend it as a technique
28 for everyone. It takes an extraordinarily sincere,
29 genuine kind of fellow to be able to do this and he was
30 that kind of man.



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1 MR. POLLOCK: That certainly strengthens
2 the position too of the bargaining agent for the union
3 in the sense that when he goes back to the union meeting
4 he can say to the membership, "This is his offer and we
5 know from the past that it is his final offer. It is
6 either take it or go on strike".

7 MR. ADAMS: Now, this gentleman did
8 have some strikes in the course of his bargaining, but
9 they were never settled on any different terms than the
10 terms he offered originally. The development of this,
11 I think, was tried by the General Electric Company in
12 the United States, and I think it got the name Bulwerism,
13 but, of course, everything gets distorted. As I say, I
14 can't recommend it as standard strategy, but I say in
15 general the sincere approach, don't make any foolish
16 offers, don't take your union people for fools, they know
17 when you are making a sensible offer or not --

18 THE COMMISSIONER: To what extent
19 has that been included as part of the education of
20 management?

21 MR. ADAMS: Well, I may say that so
22 far as my influence on the people I serve is concerned
23 I try to inculcate this notion that you should not take
24 silly positions because the union will detect them.
25 It is just a practice. And similarly you should not
26 put forward foolish propositions, that is, requests for
27 amending the contract which you are not sincere about.
28 There is no point in it. However, I think I am getting
29 away off the track.

THE COMMISSIONER: No, these are very



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1 important considerations and I would like to ask you
2 this: In these exchanges is any attention at all paid
3 to, say, general economic or industrial conditions,
4 questions of production, or is it assumed that in the
5 course of time every two or three years there is a
6 legitimate automatic demand for increased wages or the
7 extension of benefits? Are these related in any way to
8 other criteria?

9 MR. ADAMS: Yes. I should think that
10 the great part of all collective bargaining is
11 taken up by claims by either one side or the other that
12 the economics of the situation demand either an increase
13 or a decrease and where we fall down here is, first of
14 all, the lack of reliable up-to-date statistics as to
15 the state of the economy. They are always out of date
16 and even if they were just published yesterday the side
17 that doesn't like them claims they are out of date or
18 questions their validity, questions the basis upon which
19 they have been prepared or in some way seeks to make
20 them irrelevant.

21 THE COMMISSIONER: It strikes me when
22 you consider the number of factors that are at work,
23 say, in the processes of what you call the general
24 economy it is beyond human judgment to be too well and
25 sufficiently justified in conclusions.

26 MR. ADAMS: That is quite so. Now,
27 if it were simply a question of ultimate good faith on
28 both sides and you were simply trying to decide on the
29 economics of the situation, not only the economy of the
30 country as a whole, but the economy of the particular



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1 employer, his past performance, his possibilities for
2 the future, the kind of business that is projected for
3 him, the other changes in costs which he obviously must
4 meet and you were simply trying to make an equitable
5 estimation of that anticipated income, so much to the
6 workers and so much to the other places where dollars
7 must be spent, this would be a relatively simple situation,
8 one which we never get. Because, first of all, in
9 most cases you have a clash of philosophy as to how you
10 apply such things. Quite frequently on the union side
11 you have spokesmen who do not believe that a profit of
12 any size is ever justified. Now, that is extreme. I
13 want to be fair and there are plenty of them who do
14 realize the situation. However, you can encounter this
15 kind of person. You can also encounter the kind of
16 union fellow who does not believe that any sum of money
17 should ever be set aside for depreciation. There are
18 others who do not believe that anything should be spent
19 on research: No reserve for any purpose should ever be
20 established, and, if you have accumulated a surplus,
21 that that must be available to increase wages. The
22 whole approach to the examination of the company's
23 financial statement is usually such that it is futile
24 to even put it forward.

25 Let me give you an illustration: Some
26 years ago, in representing a company which has since
27 ceased to function, they were in great financial
28 difficulty. Competition had practically forced them out
29 of the market and eventually did. Before they left they
30 came to the bargaining table and were faced with what in



1 those days was considered a large demand --- perhaps
2 ten or fifteen cents an hour. They came to me and said,
3 "It is utterly impossible for us to increase our wages,
4 and we want to know if you think it would be good
5 strategy for us to say so in the beginning and offer to
6 give the union access to our books". Now, under the
7 circumstances I said, "I guess you have to try anything
8 in order to save the situation". So, they eventually
9 got around to saying, "We are not making any money and
10 we are in grave danger of being forced into bankruptcy
11 if we are going to continue", and something like 800
12 people's jobs depended on it --- "You must agree to
13 carry on without an increase." They said, "Any kind of
14 information you want from us to verify what we have told
15 you is available to you. What form do you want it in?
16 Here is our audited financial statement". The union
17 people said, "We don't believe that. We don't understand
18 it", and so on. Which is usual. So, it was suggested
19 to them that they go out and hire a chartered accountant
20 to represent the bargaining committee, to come to the
21 company and to discuss with the company's auditors and
22 get the information and then report back. So, this was
23 decided upon, and it was for me a first in collective
24 bargaining and I thought it was an excellent idea under
25 those particular circumstances. Eventually we were not
26 entitled to receive necessarily the report which this
27 auditor made to the union; this was their business. But,
28 they did offer it, and we got it. For the first four
29 pages approximately of the report he spoke like an
30 accountant and he agreed with the company's auditors.



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1 Then he launched into about ten pages of comment which
2 seemed to me to be more political than anything else,
3 and ended up by recommending that they should get ten
4 cents an hour, because the company had over the total
5 period of its existence accumulated an operating surplus.
6 Of course, he did not tell them that an operating surplus
7 was entirely distributed in real estate and obsolete
8 machinery and goods in transit and inventory and that
9 you simply could not spend it unless you went to a bank
10 and got a loan against it. So, the whole experiment
11 was a complete failure.

12 I am not completely discouraged, of
13 course. I feel that in cases of that kind it is the
14 only approach available. I had another one that was much
15 more satisfactory, a rather similar situation, and we
16 invited the union to make a complete examination of
17 the company's books, and they did so. In that case they
18 recommended to the union that no increase should be
19 sought or given, and it was accepted, and the contract
20 was renewed for, I believe, one year without change.
21 You might say that was a happy result. Unfortunately,
22 the following year the company had to give twice as
23 much increase as anyone else was giving at that time
24 because they had skipped the previous year. So, it was
25 only a very temporary relief from the pressure that is
26 being constantly being put on them.

27 Now, it is a very complex situation.
28 I can only say that in general terms you have union or
29 employee representatives coming to the bargaining table
30 seeking what to them is socially desirable, namely,



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1 more money, more benefits and so on.

2 MR. POLLOCK: Socially and economically
3 desirable.

4 MR. ADAMS: No, socially: What they
5 think is good for them. On the other side you have the
6 employer trying to reduce that position down to something
7 which is economically feasible for him --- at least, that
8 he is entitled to. I don't deny that there are
9 employers who would seek to reduce it further than that.
10 Human beings are such that you can find all sorts of
11 characters. But, the essential thing that is going on
12 in the bargaining process is that the man who works
13 says, "I would like to have more than I am getting for
14 my labour. I am going to ask for it". Theoretically,
15 he expects to get an argument about it. He expects to
16 be shown that he can't get perhaps all of it, but he may
17 get some part of it. I remember one very extraordinary
18 case in which a union came in and asked the employer for
19 an increase --- their proposals for renewing the
20 contract. It was a modest increase requested. The
21 employer came to see me as he ordinarily did and he said,
22 "What do you think of this?", and I said, "It is amazing.
23 What you should do is have a meeting right away before
24 they change their minds and agree to it. Don't haggle.
25 Don't offer them less. Just congratulate them on having
26 made a reasonable request". It is so infrequent that
27 this happens. You very rarely get proposals from unions
28 that can be accepted, even by the most honest employer.
29 When you do get them I think you should recognize them.

30 THE COMMISSIONER: I was just wondering



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1 whether in assessing the position, say, of the employer
2 he takes into consideration his investment: Does he
3 relate that to some percentage of what you might call
4 interest? Take the public utilities: The railways are
5 limited in their ultimate profit, say, to 8%.

6 MR. ADAMS: The railways are?

7 THE COMMISSIONER: Yes, that has
8 always been the principle for a public service, that
9 you cannot charge unreasonable rates.

10 MR. POLLOCK: The same applies to Bell
11 Telephone, whenever the yield on their capitalization
12 is controlled.

13 THE COMMISSIONER: In determining the amount
14 which he is concerned to consider for himself, does he
15 proceed along any such basis as that ----"I will have
16 10% on this money because I have the money at risk.
17 I do not know what the future will do. I have half a
18 dozen items that I must prepare for including replacement
19 of plant that has become obsolete"?

20 MR. ADAMS: I am sure in general
21 great consideration is given to such things, such as
22 adequate return on capital, not necessarily in terms
23 of "I must get 8% or 6% this year", but over a
24 foreseeable period there must be a reasonable prospect
25 of return, otherwise it would be foolish to invest the
26 money. Again, I have bargained for people who are so
27 incompetent in terms of running their own business that
28 they could not even tell you what it was costing them
29 to produce an article. They just did not know anything
30 about it, they are producing it because they were in



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1 competition with somebody else and the competitor was
2 charging so much for it so they charged the same. The
3 competitor was paying so much wages, so they paid the
4 same, and they had no idea whether they were making a
5 profit or not. Now, that is again a very extreme
6 situation. Those kind of people don't stay in business
7 very long. But, modern business does require an
8 immense amount of talent such as accounting, research,
9 planning, and the larger it is the more of this is
10 required and the more complex the business the more
11 you must get into it. A company, for instance, that is
12 planning upon expanding into the export market must do
13 an enormous amount of market research, study the
14 conditions in foreign countries, before they even dare
15 go into that. So, their income dollar should be
16 prudently spent and must include some provision for this
17 sort of planning and research. It is vital to the
18 business.

I have often ---- perhaps this has
become a sort of a cliche --- but I have often said to
union people in the course of bargaining that the dollar
we are fighting about --- not the dollar you are
already getting in wages and not the dollar that you
already know what the company is doing with --- but
this possible extra dollar that is going to be there
and that you should get, in the great majority of
cases that dollar would be better spent on the company's
program of research or expansion than if we gave it
to you because you will spend it on ordinary things.
If you leave it with us, we will expand this business,

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1 we will create more employment.

2 THE COMMISSIONER: It is pretty hard
3 to reduce these factors to any form of mathematical
4 formula.

5 MR. ADAMS: Oh, indeed. But the great
6 problem is that in particular cases, no matter how much
7 effort you put into it, you can end up with a totally
8 unreasonable position by either one side or the other
9 and that is they have come as close together as they
10 are going to come and the issue is usually economic
11 and then they say, "Well, now that we have exhausted all
12 possibility of reaching agreement by the use of reason
13 and persuasion and good faith and influence of
14 personalities and all those sort of things, now we are
15 going to resort to a strike".

16 THE COMMISSIONER: Would you allow me
17 to ask this question? How do you conceive the nature
18 of labour? Is it, as sometimes has been called, a
19 commodity which you sell to a producer or are we
20 compelled to look upon it as a form of association?
21 You have two factors, they cannot get along independently
22 of each other: they must cooperate more closely and
23 that gives them a standing which can be characterized
24 as a social relation or something of that sort.

25 MR. ADAMS: Well, I think the answer
26 to that is that labour is not merely a commodity. I
27 think it is a commodity, but is not merely that. It is
28 also a very essential part of the human being, his
29 energy, his skill, and you can't treat it actually as
30 a commodity. Other factors must be given full



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1 consideration. But, unfortunately, when labour is in
2 short supply and when the labour union is conscious
3 of its monopolistic position it does not hesitate to
4 treat it as a commodity.

5 THE COMMISSIONER: I suppose that is
6 because labour, so-called, is human nature.

7 MR. POLLOCK: I think maybe when you
8 mentioned earlier the fact of providing funds for
9 depreciation, for machinery, I think that probably
10 labour feels that there should be some fund for
11 depreciation of labour and that it may be very well as
12 far as the company is concerned to show on the books
13 that it has got an earned surplus of so much and that
14 they are developing this plant to such a great extent
15 that they are becoming the largest in the country, but it
16 is little consolation to the man who is working there
17 if he doesn't get much of that development back in his
18 pay package or in some form of security that he can
19 draw on later.

20 MR. ADAMS: This is always a factor
21 and I think that we must give unions enormous credit
22 for having developed our thinking along the lines of
23 pension benefits, welfare plans, prepaid medical plans,
24 hospital plans. I think they have to be given the
25 major share of credit for the inauguration of all these
26 things which I personally think are good.

27 THE COMMISSIONER: And what does that
28 mean as to the possibilities of the future? Does that
29 mean that then we are gradually becoming more specific
30 in the factors we take into account which would mean



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1 that we could estimate a secured return for the future
2 of the business at a specific rate?

3 MR. ADAMS: Oh, no. All of these
4 things that we speak of in terms of benefits for
5 employees so far as the future of the business is
6 concerned have to be lumped together and put under the
7 category of the cost of labour, direct wage rates and
8 indirect and all of these various benefits and that is
9 one of your factors in your calculation as to whether
10 you can stay in business or not. You have raw materials,
11 you have machinery and with these constantly increasing
12 rates or values the normal depreciation allowed even by
13 income tax authorities is not sufficient to enable you
14 to replace a thing when it wears out and you have to make
15 some provision for additional reserves there and if you
16 are trying to expand, grow and develop the products,
17 you have to spend money on research and in planning.

18 THE COMMISSIONER: What is the role
19 that the government is beginning to play in all this,
20 what effect should that have? The research by the
21 government today is assuming tremendous proportions.

22 MR. ADAMS: Yes, and is of tremendous
23 value.

24 THE COMMISSIONER: And the benefit of
25 that is to business.

26 MR. ADAMS: Oh, yes.

27 THE COMMISSIONER: But business in a
28 social sense. Here we have government today almost
29 building plants and advertising for people to come in
30 and run them in order to take up what has been looked



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1

upon as the social necessity of a plant.

2

3 MR. ADAMS: When you look at a
4 situation such as Cape Breton --- all I know about it
5 is what I read in the paper --- but where you have an
6 economic operation and one which eventually must die
7 unless the government comes to its aid here they have
8 been subsidizing it for years simply to preserve jobs.

9

10 THE COMMISSIONER: That is the actual
11 situation, I think, in coal for instance, but I am
12 thinking about new industry. The same section of the
13 Dominion that is faced with an extraordinary situation
14 in relation to coal is also endeavouring to establish
15 new industry, to introduce new modes of creating wealth,
16 and of engaging the human beings in some relation so that
17 they can share in the total production of the country.

18

19 MR. ADAMS: I think the new role of
20 government in that area is quite important. I think,
21 for example, that in atomic research if it were not for
22 government funds I doubt if it would ever have got off
23 the ground.

24

25 THE COMMISSIONER: I don't know about
26 that. I am not confining it to that, but take the
27 operations of the Trade and Commerce Department at
28 Ottawa. They have their agents all over the world.
29 Doing what? Doing nothing except trying to increase
30 the export sales of people who are manufacturing goods
in this country.

31

32 MR. ADAMS: That is right, of course,
33 and companies must learn to take advantage of this
34 service.



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1 THE COMMISSIONER: That is all done
2 for the purpose of creating in this country a wholesome
3 and healthy condition of humanity and the material
4 production that seems to be associated with it.

5 MR. ADAMS: I would assume so, I would
6 assume so.

7 THE COMMISSIONER: So it doesn't leave
8 very much of a residue of what they call usually a
9 laissez faire.

10 MR. ADAMS: No, there is not much of
11 that left, really. We are concerned, everyone is
12 concerned about his fellow man a great deal more than
13 we used to be and that is quite properly so and that is
14 why I think when we look at strikes they are
15 distressing situations whether they are at your company
16 or somebody else's company, whether you know the people
17 concerned. There are people who have got into an awful
18 fix.

19 THE COMMISSIONER: I think we all
20 agree with you there, Mr. Adams. The problem is this:
21 Can we introduce more rational considerations into this
22 admittedly difficult problem?

23 MR. ADAMS: Well, here I hope I have
24 some suggestions for that. I have outlined here some
25 standards which I think must be applied to all these
26 situations. I think one of the reasons why we have too
27 many strikes is that I don't think the people who
28 decide to strike always understand the risks that they
29 run when they strike. They are inclined to think that
30 the picket line will protect them from all risks and,



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1 frankly, this is what the picket line tries to do ---
2 prevent them from the risk that a strike action will
3 fail.
4

5 Now, no matter how you put it, whether
6 the union can't afford to lose face, which is a very
7 popular expression, when you are trying to settle a
8 situation that has gone through several weeks of strike,
9 you are always reminded that the union can't afford to
10 lose face, so you must do something to make it appear
11 that they have won even though they didn't. I don't
12 understand it. There are times when they like to lose
13 face because the face that they put on in the first
14 place should never have been there.

15 THE COMMISSIONER: That is not
16 confined to disputes between management and labour.

17 MR. ADAMS: That is right. But, the
18 inherent risk of strikes has to be that if collective
19 bargaining is to run its normal course and the first
20 risk is that they may lose that employment entirely.
21 Now, this can happen in many different ways. The
22 employer may decide to call it a day and close the plant
23 as some have done.

24 THE COMMISSIONER: Have you any
25 statistics of that?

26 MR. ADAMS: As to how many, no. I
27 have never made any study of that. But he does many
28 things which impinge on the future job. He may decide
29 to go out of business partially, that is, perhaps some
30 line of goods in the course of the strike he decides
 "Well, we are not going to continue manufacturing that



1 line, it is too expensive, there is not enough profit
2 in it. We can import it or let the competitors take
3 it, get out of it."

4 MR. POLLOCK: Are these decisions made
5 on a permanent basis or are they tactical weapons to
6 defeat the strike? Let me elaborate on that.

7 MR. ADAMS: I am speaking now of what
8 is ultimately the result. Nothing to do with tactics.

9 MR. POLLOCK: You alluded earlier to
10 the situation of the uneconomical producers of coal in
11 Cape Breton. There are uneconomic producers of
12 manufactured articles in Ontario who can say to you, "I
13 can't compete with this large manufacturer, the only way
14 I can save, I can use the same equipment and the only
15 way I can save is I have to pay my employees who are
16 doing the same thing as those of the gentleman in the
17 other plant a lower rate". Now, if those uneconomic
18 plants can't compete on the basis of labour, ought
19 they to be out of business?

20 MR. ADAMS: I am not saying that they
21 should remain in business: I am just saying that one of
22 the things which happens and can happen as a result of
23 a strike action is that the job disappears for a variety
24 of reasons ---- some well intentioned and some
25 otherwise. It can happen.

26 Now, the other great risk they run is
27 that the workers who decide to strike actually have to
28 undergo hardship, they have to do without their pay and
29 they may not be able to stand up to this stipulation as
30 long as that particular employer can do without them and



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1 they must eventually give up the ghost and return. This
2 happens, it is one of the risks they take. While this
3 can happen to the group as a whole, there is always the
4 danger of a certain erosion of the positions of
5 individuals. You may have an enthusiastic supporter
6 of the strike at the beginning who decides to leave the
7 group either by going back to work if he can, or by
8 moving to a different locality or to a different
9 employer and getting out of the picture entirely. These
10 things happen. These are risks which, to me it seems,
11 are inherent and natural when anyone decides to take
12 strike action. I am quite satisfied that the principal
13 reasoning for the picketing is to maintain this group
14 as it started out, this enthusiastic group of people all
15 of one mind.

16 I am assuming here that this strike
17 was taken in the first place by a group who really
18 wanted it and that it was not something foisted upon
19 them. They happen too, but I am not really concerned
20 with that relatively rare sort of situation.

21 THE COMMISSIONER: A voluntary action?

22 MR. ADAMS: Yes, sincerely taken, but
23 perhaps mistakenly. I think what is not recognized
24 is that this risk of erosion of a group, which they
25 seek to protect themselves against, is something which
26 they are not entitled to use unlawful means to protect,
27 such as violence, intimidation, mass picketing and that
28 sort of thing, because if the employer had a position
29 vis-a-vis the strikers before the strike is taken which
30 he could justify in his own mind and perhaps to an



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1 independent tribunal, his position is no different
2 after the strike. He still has the good case or the
3 bad case as the case may be as he had before the strike.
4 In other words, strikers are not always right. They
5 make mistakes too. This notion that no one should ever
6 cross the picket line, that the picket line is a
7 sacred thing and that all union people particularly
8 should observe all picket lines is really nonsense. It
9 can only be supported on the theory that a striker is
10 always right.

11 MR. POLLOCK: Or that he thinks he
12 is right.

13 MR. ADAMS: They never inquire into
14 the rightness or wrongness of what he is doing. They
15 just accept that a picket line is a badge of
16 infallibility. I regret to say that this notion, the
17 sanctity of the picket line, has been given so much
18 publicity, so much propaganda, it has been supported so
19 many times by illegal action which has gone unpunished,
20 that I can hardly blame the ordinary man for getting
21 the idea that perhaps it is illegal to cross a picket
22 line, and some of them do think so.

23 I recall some years ago we had a
24 railroad strike in Canada ---- not the last one, but I
25 think it was the second last.

26 MR. POLLOCK: In 1951 or 1952?

27 MR. ADAMS: The Prime Minister then
28 decided to summon Parliament to deal with it and they
29 could not come by rail because the railways were not
30 running. So, they got them there by airplane and bus



1 and so forth, and there was a picket line in front of
2 the Chateau Laurier Hotel which happens to be a railway-
3 owned operation. One of the men who was then summoned
4 to Ottawa as a Member of Parliament refused to go into
5 the Chateau Laurier where he normally stayed when
6 Parliament was in session because he said he would not
7 cross the picket line, and he made quite a point of this.
8 I suppose there was some political advantage, he thought,
9 in getting some publicity for that position he took.

10 MR. POLLOCK: Maybe he felt he was
11 philosophically committed to that belief.

12 MR. ADAMS: Well, he is a good
13 personal friend of mine and I hate to comment upon his
14 philosophy, but I think it is a most regrettable thing
15 that any public figure would take such a position,
16 because if anyone was entitled to go to Ottawa and live
17 in his normal quarters to carry on the function of
18 Parliament it was surely the Members who were summoned
19 to deal with the strike situation in an emergency
20 session, and yet you have this totally nonsensical
21 position "I cannot cross the picket line at the Chateau
22 Laurier". But, such action, such publicity lends
23 strength to it and encourages people to think that that
24 is the law of the country, that you cannot cross a
25 picket line.

26 MR. POLLOCK: At this point can I just
27 refer to your comment that you made on page 4 of your
28 brief:

29 "Picketing is no longer an
30 essential ingredient of striking."



1 Any group of employees can
2 strike effectively by merely
3 withdrawing their service."

4 MR. ADAMS: This is true, and I can
5 give you two instances in my own experience where the
6 strike was 100% effective, and there was no sign of a
7 picket --- a perfect strike from the point of view of
8 the workers.

9 MR. POLLOCK: What was the size of the
10 operation?

11 MR. ADAMS: One was a craft group of
12 about 100 people working for a single employer. They
13 were absolutely irreplaceable; there was no other
14 substitute that could be found and they had a very tight
15 apprenticeship situation and nobody was being trained
16 to replace them. So, they went on strike and they did
17 not bother putting a picket line on; they simply stayed
18 home. After some time the then conciliation officer of
19 the Province of Ontario thought he should get a
20 meeting going to see if he could settle this. He
21 approached the company and they said they were ready to
22 meet anytime. He contacted the head of this group of
23 employees with some difficulty, but having finally
24 got him he proposed there should be a meeting in the
25 Minister's office to deal with this dispute, and this
26 fellow was really a president of a small union, an
27 independent type of union. He said, "No, thank you.
28 We have no desire to attend any meeting. We have told
29 the employer what we want and he knows what we want
30 and we are not going back to work until we get it."



1 MR. POLLOCK: They were in a strong
2 position because they were irreplaceable, in your words.

3 MR. ADAMS: They were very strong,
4 and they won, but the point I am making is that no
5 picketing was necessary and none was attempted. In the
6 other case in which there was absolutely no picketing,
7 as I recall --- there must have been others, of course
8 --- some years ago when I was still working for the
9 Ontario Department of Labour I was asked to try my hand
10 at conciliating a labour dispute. This was in an
11 industry, that is, a group of employers all manufacturing
12 the same thing. For some years they had carried on
13 what we now call industry-wide bargaining, that is, as
14 a group of employers they dealt with the union. So,
15 here we were and there was no work going on. The union
16 had adopted the usual tactics, "Our collective agreement
17 has expired and we do not work until we have another
18 one". No work no contract, and no contract no work.
19 This union had a union hall, I believe of their own,
20 and there they met every day. No one went near any of
21 the plants and there was no picketing of any kind.
22 They met in this hall every day and they had a
23 negotiating committee, and when I got into the picture
24 I went to Queen's Park and I got this committee to come
25 in with the representatives of the employer. For several
26 days we tried to work out solutions to the impasse.
27 Each time that anything new came up the union committee
28 would say, "Just excuse us for a few moments", and they
29 would trot off to the union hall and perhaps in half
30 an hour they would come back with the answer which



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1 usually was, "No, it is not enough", and we would start
2 all over again.

3 I mention this as being an instance
4 of a very strong strike action without any necessity
5 for picketing. They knew their workers would stick
6 together and, as a matter of fact, their device for
7 holding them together was having them come to the union
8 hall every day. It is a much more peaceable operation
9 than mass picketing, but not practical in all
10 circumstances.

11 MR. POLLOCK: Not practical in most
12 circumstances.

13 MR. ADAMS: I would think so. But, I
14 am coming back to the point that if erosion of the
15 strikers' group is at risk and that this is inherent
16 in the situation, then why are they entitled to disrupt
17 so many other people, interfere with so many other
18 people's rights in order to maintain a picket line for
19 that purpose?

20 Now, unions frequently say that there
21 should not be any resort to injunctions. "If we do
22 something wrong on the picket line which is probably a
23 crime or an offence, let the police look after it and
24 prosecute us and so on". The type of things which
25 happen on a picket line can never be detected by the
26 ordinary police force. It is quite easy to see that
27 when you mask the activity of a few malefactors by
28 hundreds of people walking about that they are not going
29 to be detected in their criminal acts. That is, if you
30 want to slash the tires of somebody's motor car or put



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sugar in his gasoline tank and you have 100 people walking about screening what you are doing, you are not likely to be detected, even if a policeman is fortuitously there at the time. One of the probable reasons for mass picketing is to screen actual illegal activities by individuals.

THE COMMISSIONER: Is there any established case of that sort of thing?

MR. ADAMS: I can't give you any citation where people have been prosecuted for it because usually they are not apprehended, but you must recall that a few years ago, for instance, the horrible situation in Windsor in which ordinary people driving along the street were stopped.

THE COMMISSIONER: Yes, I remember that.

MR. ADAMS: You were required to hand over the keys of your automobile or get out of your automobile and leave it so that the strike would be effective. No one was ever prosecuted for that, no one was ever apprehended. The ordinary police force could hardly be expected to cope with a situation of that kind, and while I have no doubt there are many instances of mass picketing in which there is no illegal or criminal act contemplated, it does create an atmosphere in which it is quite likely that anyone so minded will find an easy opportunity to do it.

Could I have a recess of five minutes?

THE COMMISSIONER: Yes, indeed, Mr.

Adams.



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1

---Short recess.

2

3

4 THE COMMISSIONER: I want to ask you
5 this, Mr. Adams...

6

7 MR. ADAMS: I think I would like to
8 direct some attention at this point to that part of my
9 brief which is found on page 8. You will hear a great
10 deal in the course of your inquiries, I am sure, about
11 the right to strike and you will hear it from unions
12 who never strike: It is the workers they represent
13 who strike. And if there is a right to strike, it is
14 the right of a worker, not the right of their agent.

15

16 THE COMMISSIONER: It is the right to
17 what?

18

19 MR. ADAMS: It is the right of the
20 worker to cease work. There is a comment about that
21 in the decision of Mr. Justice Locke in the C.P.R.
22 versus Zambri case, commonly known as the Royal York
23 case in which he points out that it is workers who strike,
24 not unions. However, there is nothing objectionable
25 about the union speaking of the right to strike on
26 behalf of principles, of course.

27

28 THE COMMISSIONER: Just speaking of
29 that word "right" it seems to me that a strike is an
exercise of liberty because there is no law against it.

30

MR. ADAMS: Yes.

31

32 THE COMMISSIONER: And the liberty
33 is really that freedom of action which the law allows.

34

35 MR. ADAMS: I think one can properly
speculate as to just what is the basis of this right or



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1 liberty. I find that it arises out of the nature of
2 an employment contract which is essentially a contract
3 for the sale of a personal service and our law in courts
4 of equity has always refrained from commanding
5 specific performance of such a contract.

6 THE COMMISSIONER: Why is that?

7 MR. ADAMS: Because of the
8 impossibility of enforcing it.

9 THE COMMISSIONER: Do you think that
10 is the only thing?

11 MR. ADAMS: I think it is the principal
12 reason.

13 THE COMMISSIONER: That is the reason
14 that may be given, but was not that something that came
15 into existence after the release of serfdom, of slavery?
16 You know, in the early stages of England you were
17 fastened to the land on which you happened to be.

18 MR. ADAMS: I amnot suggesting that
19 it is desirable that it should be subject to control by
20 specific performance, but at least at the practical
21 level it is not considered enforceable. In certain
22 particular cases where the employment contract was very
23 formal and where it had long duration, where a particularly
24 rare skill was being sold, grave damage could occur if
25 the employer refused to perform the service.

26 THE COMMISSIONER:What have you in mind
27 there?

28 MR. ADAMS: Well, let us say, for
29 instance, a person who is a very talented singer and a
30 theatre contracts with that person to give a series of



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1 performances.

2 THE COMMISSIONER: That is Lumley and
3 Wagner.

4 MR. ADAMS: Yes. And if there is
5 refusal to perform the service then great damage results
6 and, of course, damages can be collected for failure to
7 perform the contract, but specific performance, that is
8 another thing.

9 THE COMMISSIONER: That is affirmative
10 specific performance, not negative.

11 MR. ADAMS: They do in a negative way.
12 Now, in most employment contracts ---- and the
13 intensity of the obligation seems to vary with the kind
14 of skill which is concerned --- you have generally
15 speaking a situation in which the contract can be
16 terminated at will by either party subject, of course,
17 to any peculiar terms of the contract. For instance,
18 if you have a solemn obligation to hire a person for a
19 year and do not extend that employment opportunity for
20 a full year the courts ordinarily give damages
21 appropriate to that breach. But, where the contract is
22 for indefinite duration, the rate of payment is fixed
23 at so much per hour, for example, the kind of notice
24 required to terminate the relationship is very short,
25 the damages are trifling and so there are very few
26 instances of damages being sought for that kind of
27 contract breach. But generally speaking both an
28 employer and employee at common law could terminate
29 this relationship whenever it became mutually
30 unsatisfactory.



1 This right to terminate by an employee,
2 the right to seek another job, is really the basis of
3 the right to strike. He doesn't go quite so far as
4 complete termination. What he is doing in effect is
5 saying: "I am not satisfied and if you don't do better
6 with people in terms of remuneration I won't stay with
7 you, I am going to quit", and to demonstrate the
8 sincerity of his position he quits temporarily, simply
9 to show the employer, "You can't get along without me,
10 you must make a better bargain with me".. Now, if you
11 examine the position of an individual employee who
12 strikes --- and it has happened, it happens quite
13 often --- without picketing, of course --- that employee
14 runs risks. The employer may surprise him by saying,
15 "I can get a substitute", or, "I can do without this
16 service entirely, I will import the product that you
17 have been making for me", or "I will get a contractor
18 and have it made somewhere else", or "I will purchase
19 it from a competitor and supply my customers with it
20 that way". And if these things happen he has no
21 inherent right that I can see to protest.

22 Now, if --- and this is what happens
23 when we have collective bargaining or collective
24 action --- he gathers about him a group of employees
25 similarly situated and they say, "Well, now, let us all
26 do this together, let us all stop work, let us
27 demonstrate very effectively to the employer how
28 necessary we are to his welfare, to his business", you
29 have only an increase by numbers, an increase in
30 intensity of pressure. You have not in any way changed



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1 the essential characteristics of the action: He still
2 is running the risk: His job can be discontinued and he
3 can be replaced. Whether it be a right or a liberty
4 in organized society it is one of the individual rights
5 which is subject to qualification, subject to restriction
6 and the state has so restricted it, not only in this
7 jurisdiction but in practically every jurisdiction.
8 Here we have the state saying, "Any collective action
9 which you take must be done in good faith", and, as I
10 have tried to demonstrate, the action of striking is part
11 of this whole collective process of bargaining. Now,
12 if it is something that must be done in good faith,
13 whatever that means, then I suggest there is ample
14 ground for the state to intervene and set guidelines
15 for the conduct of strikers including prohibition of
16 strike in some cases. We have already experienced and
17 have, in fact, a good deal of experience with the
18 prohibition of strikes in certain types of employment.
19 Our police forces, for example, are by statute denied
20 the right to strike and compelled to resort to
21 arbitration. Our Firefighters Act in this province is
22 similar with this exception that the prohibition of
23 striking is not in the statute and this is by arrangement
24 with the particular union involved, the Firefighters'
25 Association, who have it in their constitution. And so
26 they asked that it not be put in the statute because
27 they themselves do not believe in it and do not permit
28 it.

29 Now, then, these are true instances
30 in which for apparent reasons, maintenance of order, and



so on, the government has decided that if you decide to make this kind of work your career you must not exercise the right to quit or to strike except with due notice and under certain statutory conditions and this is for the protection of the public, obviously. More recently they have extended the same prohibition to hospital workers and we are now operating under special arbitration Acts. As a matter of fact, I have one tomorrow, a group of workers who would ordinarily be either striking or threatening to strike and who are instead going to an arbitration tribunal where presumably the decision will become translated into a collective agreement without a strike. This does not exhaust the situations entirely. There are other classes of employment and other types of public service which must not be interrupted by strikes if we are to have order and peace.

RJY/SS

There are two possible ways of doing this. We can proceed to add to the class of jobs, police, fire, hospital, others, and pass statutes and say there will be no strikes in these circumstances. If you do, if any government moves in that direction, I think they will find it virtually impossible to know where to stop doing it. You get into areas in which at times perhaps a strike could be tolerated and at other times it could not. This has led me to suggest that the proper solution is to proceed on the basis that no strike should take place until you first establish that it is a justifiable action to take in the course of collective bargaining; and, of course, if you are



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1 proposing to strike something like a post office or a
2 national railroad, instead of waiting until the strike
3 has occurred and then summoning Parliament to deal with
4 it, my suggestion is why not deal with it first; come
5 before some tribunal and say, "We feel we must strike",
6 and then you will be told whether or not you can strike.
7 In deciding these kinds of applications, I have
8 attempted to set out certain criteria which I think are
9 naturally present in the minds of any group of workers
10 who decide to strike.

11 The first of these is that in order
12 to have a strike which is justified you have to have a
13 claim which has an equitable base, that you have been
14 denied improperly. Now, this is of tremendous
15 importance because quite often we have had strikes on
16 issues which had no relationship to equity or even to
17 economics; no equitable basis whatever; just pure
18 foolishness.

19 THE COMMISSIONER: That may be quite
20 so. Of course, when you say "an equitable claim", I
21 think you must qualify that: What is honestly
22 considered to be an equitable claim?

23 MR. ADAMS: In their minds it has to
24 have an equitable basis. I will give you an example of
25 a purely nonsensical type --- it was not in my own
26 personal experience, but I have read about it. Some
27 years ago in Nova Scotia there was quite a feeling
28 between two adjacent towns as to the calibre of their
29 hockey teams, and they had a game one night, and the
30 home town team lost and there was high feeling amongst



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1 the spectators against the referee whom they thought had
2 been very unfair in the way he handled the game. The
3 next day the workers of this particular coal mine who
4 lived in this city went on strike demanding that this
5 referee be removed and never allowed to referee another
6 hockey game. Now, of course, it was not a strike of
7 long duration. First, it had no equitable basis;
8 secondly, they were striking against an employer who
9 had nothing whatever to do with the appointment of the
10 referee in the hockey match, asking for something that
11 he was completely powerless to grant.

12 MR. POLLOCK: And over issues which
13 are not within the subject of working conditions.

14 MR. ADAMS: This is my second point,
15 that the claim must be such that it is within the power
16 of the employer to grant redress. We have numerous
17 instances of this: Jurisdictional disputes between
18 unions are frequently, almost inevitably, raising
19 issues which a particular employer cannot answer. If
20 he says, "I will give the work to the carpenters", then
21 the lathers will strike and the project is tied up.
22 If he says, "I will give it to the lathers", then the
23 carpenters will strike, and no matter which way he moves
24 he is going to have a strike. If he does nothing, he
25 will have a strike. It is just an impossible situation
26 so far as he is concerned.

27 Now, the third point is that the
28 strikers must have exhausted all other available means
29 of obtaining redress. This might be called a moral
30 principle; that is, before you take the extreme action



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1 of striking which causes hardship to people, to families,
2 to children, before you can justify that, you must be
3 sure that there is not some other rational way of
4 getting what you want.

5 THE COMMISSIONER: Of course, that
6 concerns the strikers themselves, primarily.

7 MR. ADAMS: Yes, but I think if you
8 are considering, as I suggest, a tribunal is going to
9 consider whether or not they will give this group
10 permission to strike, you are entitled to make sure
11 that they have tried to get redress by normal, rational,
12 peaceful means. In other words, have you really
13 negotiated this point, or have you considered the
14 possibility of arbitration, or are you just being a
15 stubborn person who will think of nothing except
16 absolute submission to your will?

17 The fourth point, the gains which
18 would accrue if your strike action is successful must
19 be worthwhile, sufficient to outweigh the obvious losses
20 you are going to incur. Here again so many times we
21 have strikes over trivial things, simply to save face,
22 or maintain the organization, give it an image of
23 militancy or power, or simply to teach somebody a
24 lesson --- all sorts of motivations.

25 Fifthly, they must have reasonable
26 hope of success in order to embark upon this course.

27 THE COMMISSIONER: Don't you think
28 they do feel that they will be successful in the majority
29 of cases ----or do they? I simply ask your opinion on
30 that.



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1 MR. ADAMS: I think this is quite a
2 variable situation. It is hard to know how they feel.
3 Certainly you would find individuals in any striking
4 group who would be so enthusiastic that they would not
5 contemplate anything but 100% successful outcome. There
6 will be others who would be very doubtful of success.
7 If you speak to the leaders, those who are guiding and
8 counselling them, they will at least pretend to be very
9 hopeful of success. But there are times ---- well, it
10 becomes obvious after the fact, let us say, that they
11 never could have had any hope of success. For example,
12 when a strike begins without any proper support by the
13 rank and file, it is engendered and brought about by
14 little incidents that fan people's passions, and when
15 things cool off you begin to see how trivial the issue
16 is which brought them out on strike in the first place,
17 and they don't really care whether they get it or not.

18 THE COMMISSIONER: Would you say that
19 strike action is taken rather freely and irresponsibly
20 by the majority of labour leaders?

21 MR. ADAMS: No, oh, no, I would never
22 go that far. I say this is perhaps quite rare. I do
23 recall one strike during wartime. I was then working
24 for the government and I was sent to try to bring about
25 a settlement. I found that we had about 8,000 people on
26 strike and for three days I vainly tried to find out
27 from the union concerned why they were on strike, and
28 they could not tell me, or would not. I could get no
29 information out of the employer because he professed to
30 be as completely mystified as I was. Eventually a leader



1 showed up, a gentleman who has since passed to his
2 reward, who operated in the field of counselling labour
3 at that time. He came into the picture and he told me
4 what the issue was, and it was a very trivial little
5 thing. We finally brought about a situation in which
6 they agreed to return to work provided there would be
7 immediate arbitration of this issue. This was arranged;
8 the arbitrator was selected, a prominent justice of the
9 Supreme Court of Ontario was ready to move in as soon as
10 they wanted him. They went back to work, the arbitrator
11 never heard of the dispute and no one else ever heard
12 anything about it. It was that trivial. That was not
13 the real reason for the strike. That was the stated
14 reason. The reason for the strike had either something
15 to do with subversive elements or the desire to show
16 their muscle at that particular time for some other
17 reason entirely. There was no hope of success so far as
18 the stated issue was concerned.

19 Now, the last test of a justifiable
20 strike is that it must be conducted in a lawful and
21 orderly manner and without interfering with the rights
22 of others, and I particularly stress here the rights of
23 the employer to resist the strike, because after all
24 that is his business. If he has a right to resist the
25 demands of his workers in collective bargaining, he has
26 a right to resist the strike. Here we get into the
27 area where, I repeat again, the government has assumed
28 a minimal role in the early stages of bargaining. They
29 have said by statute that you must sit down and talk in
30 good faith. We have conciliation procedures to help.



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1 When all these fail and they resort to strike, then
2 they sort of bow out of the picture and pay no
3 attention to whose rights are being trampled upon.

4 /FJN/SS THE COMMISSIONER: They leave that,
5 I suppose, to the law as it exists. You say that it
6 must be conducted within the apparatus of the law.

7 MR. ADAMS: It should be.

8 THE COMMISSIONER: If it isn't, it
9 is like any other violation of the law.

10 MR. ADAMS: Well, if we could have the
11 law enforced, that is to restrain excessive picketing,
12 violence and so forth by the ordinary process of law,
13 then I suppose there would be some basis for saying,
14 "Well, this is an interlude in bargaining in which laws
15 other than labour laws apply". But, we all know that
16 ordinary police forces do not effectively control or
17 supervise the conduct of picketers, particularly if
18 they are congregated in large numbers.

19 Then we have employers resorting to
20 injunctions to restrain this type of conduct and then
21 we have the union saying, "Now, this is an unwarranted
22 interference", and I ask you to consider who they are
23 complaining about. The government has passed a statute
24 which says collective bargaining is the legal duty of
25 both parties and here in the course of bargaining one of
26 these parties is resorting to unlawful acts to support
27 its case at its own election and the other party calls
28 upon the government to step in.

29 THE COMMISSIONER: Not the government.

30 MR. ADAMS: The court is a branch of



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1 government.

2 THE COMMISSIONER: I would not say the
3 government applies political action.

4 MR. ADAMS: No, they are not political,
5 of course.

6 THE COMMISSIONER: It is an instrument
7 of government.

8 MR. ADAMS: It is an instrument of the
9 state commonly divided into legislative, judicial and
10 executive.

11 THE COMMISSIONER: I say in the whole
12 totality of government it may be looked upon as such.

13 MR. ADAMS: It is the authority of the
14 state that is being invoked.

15 THE COMMISSIONER: That is the
16 authority in this case of law.

17 MR. ADAMS: And they say you should not
18 appeal to this institution. I regret very much that it
19 is necessary sometimes to appeal to the majesty of the
20 law in this way, but are we to operate in a jungle in a
21 striking situation in which law is suspended?

22 THE COMMISSIONER: Well, the complaint
23 has not primarily been against the instrument of
24 injunction, but of what is alleged to be improper use of
25 it, in obtaining it and having it observed in the
26 ordinary modes of procedure and it has become more or
27 less a matter of course. That is what is thrown against
28 it.

29 MR. ADAMS: The complaint is thrown
30 solely against the procedures for obtaining the injunction.



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1

THE COMMISSIONER: The specifications,
say, in the injunction order.

2

MR. ADAMS: Before the court can be
moved to grant an injunction there must be material which
justifies on the face of it the order that is made. Now,
there may be room for some complaint as to the procedures,
the times, the notices, et cetera. I would prefer to
leave that subject to people who are more familiar with it
because, personally, I have never been involved in an
injunction. But if anyone should suggest that the
court must never issue an order directed against the
conduct of strikers, then I wonder why other groups of
people are not entitled to the same immunity. Picketing
becomes quite a popular sport, as you know, quite apart
from labour disputes. We have picketing at embassies,
picketing of government offices, picketing of super-
markets and all kinds of demonstrations. So far these
have never been the occasion for very much violence or
public disturbance, but they could be. If they become
so, they must be restrained either by the police or by
injunction.

22

In any consideration of ---

23

MR. POLLOCK: Are you finished with
the six points?

25

MR. ADAMS: Yes.

26

MR. POLLOCK: Can you point to any of
those six points that you feel are not considered today
by the union in declaring a strike?

29

MR. ADAMS: Well, I have no way of
knowing what goes on in the union meeting at which a



1 strike is decided upon. I can only draw conclusions and
2 inferences from what happens before and afterwards. The
3 union meeting is secret. I suspect that quite
4 frequently there is no examination of these points at
5 all; it is usually a very emotional situation.

6 THE COMMISSIONER: But you have the
7 instigation of emotion. What was that?

8 MR. ADAMS: Emotions are engendered
9 by incidents, by propaganda. You see, one of the
10 mysteries of collective bargaining is that you commence
11 by, say, what is commonly called the demands of the
12 union. Common courtesy would have suggested that a
13 milder word would be more appropriate, such as
14 "requests", but they are commonly called "demands" and
15 they are usually phrased in the extreme and even where
16 you have settlements that result from bargaining table
17 sessions and no strike, it is almost inevitable that the
18 settlement is going to fall far short of those original
19 demands with the result that the workers as a group are
20 continually being asked to settle for less than they had
21 asked for, less than they demanded and so there is
22 always an unsatisfied aspiration there which is played
23 upon by people who like to do this sort of thing. You
24 are never satisfied. "This is the best we can do for you
25 today", and all sorts of reasons are given for failure
26 to accomplish the total result and it is not conducive
27 to harmony. I can't suggest any practical answer to
28 that.

29 MR. POLLOCK: Assuming that your
30 bargaining is in good faith, whatever that means, on both



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1 sides and you are both reasonable, the union puts the
2 position that it believes in and has economic
3 justification for it, management takes another position
4 and it believes it has economic justification for it
5 and they are at loggerheads, the union thinks that
6 their position and management thinks that its position
7 is right; well, the only remedy, I assume, when neither
8 of the parties can talk any more and convince each
9 other by words, is to say, "Well, let us test it
10 economically, let us put our position in the lockout"
11 in some circumstances and a strike in others. Now,
12 once you have done that surely before that consideration
13 is made whether you are going to risk all of the success
14 or failure of your demands on a lockout or a strike you
15 would have to weigh all these things and consider them,
16 unless you assume that either party has the death wish
17 and they are going to go out and destroy themselves for
18 some frivolous reason. I have difficulty in understanding
19 the extension of the strike in good faith. I think they
20 should be exercised reasonably and I think in some cases
21 you have to determine what is reasonable. I would like
22 to you know your view on that.

23 MR. ADAMS: I thought I was making it
24 clear. In my view there can be such a thing as striking
25 in good faith with an honest conviction on the part of
26 the workers.

27 THE COMMISSIONER: Can you get away
28 from the story of development? What was the attitude,
29 say, of management in the early days? Wasn't it
30 exclusively one for these questions to be determined by



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1 management, that there was no such things as bargaining
2 with any kind of faith, good or bad?

3 MR. ADAMS: I must admit that the
4 acceptance of the idea of negotiation with the workers
5 collectively is of comparatively recent development and
6 was slowly accepted, but it is a statutory obligation
7 today.

8 THE COMMISSIONER: I agree, but you
9 can't throw off the residue of these past experiences
10 overnight.

11 MR. ADAMS: But I would hope that some-
12 time we would have a labour movement in this enlightened
13 country which would cease to hark back to the days of
14 the Tolpuddle martyrs on every occasion.

15 THE COMMISSIONER: You have two groups
16 and each must undergo this process of regeneration.

17 MR. ADAMS: Oh, true.

18 MR. POLLOCK: There are still some
19 employers who hark back to the statute of labourers as
20 well.

21 MR. ADAMS: I don't deny that we have
22 difficult employers in the picture, quite so, and this is
23 why I quite frankly admit there are cases in which a
24 strike is justified and in which a strike should
25 succeed. I have no doubt about that, but there are
26 equally cases in which a strike is totally unjustified
27 and should not succeed.

28 THE COMMISSIONER: Well, are you
29 putting it on the basis of a rational consideration of
30 the relevant factors?



1

MR. ADAMS: That is right.

2

THE COMMISSIONER: I agree with that,
3
but the difficulty is in applying it.
4

5

MR. ADAMS: Well, the solution would
6 seem to be suggested by the unions' opposition that
7 because some strikes are justifiable and should succeed
8 and should have public support, all strikes should have
9 merely because we put up a picket line and if normal
10 picket lines don't bring the result, we increase its
11 intensity, we use mass picketing, we use violence, we
12 use intimidation to get where we want to go.

13

THE COMMISSIONER: Well, what factors
14 are open to society or to men themselves by which
15 greater clarification or understanding is reached, the
16 appreciation or the capacity to appreciate, the opposing
17 views can be imaginatively appreciated? What are the
18 means by which this can be promoted among the men and can you
19 say, can you charge the labour force with being as
20 deeply impressed with those as you can what we call the
21 management class? You have the management class with
22 greater opportunities for education, if education is an
23 instrument of enlightenment: you have a superiority in
24 that sense that they have had advantages unquestionably
25 which were not open to the mass of men. Is there any-
26 thing that you can suggest that will not have to admit of
27 a greater moral obligation on management than on the
28 men?

29

MR. ADAMS: Not today. I have a very
definite impression that there is less of an informed

30



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1 public opinion among management people about the course
2 of strikes and collective bargaining than there is in
3 trade unions, sir.

/RJY/SS4

THE COMMISSIONER: There is less what?

5 MR. ADAMS: There is less informed
6 opinion, in management. To them collective bargaining
7 is something that happens once a year or periodically,
8 and quite often they entrust it to specialists and they
9 don't make a life-work of it, but the union people do.

10 THE COMMISSIONER: Do you really think
11 there is more illiteracy in management than in men?

12 MR. ADAMS: I would not call it
13 illiteracy.

14 THE COMMISSIONER: I mean, that word
15 indicates a lack of familiarity.

16 MR. ADAMS: There is less awareness of
17 what is right and wrong in terms of collective action
18 among the management people than there is amongst the
19 union people. They have not made the same study of it.

20 THE COMMISSIONER: You think they have
21 not made the same advance?

22 MR. ADAMS: No, they have not been
23 subjected to it long enough. It is improving,
24 definitely.

25 THE COMMISSIONER: Well, then, it is
26 upon them that the forces of education should begin to
27 operate.

28 MR. ADAMS: To the extent they are
29 lacking, yes; but, on the other hand, what makes it a
30 rather hopeless task to begin to educate or teach



1 management people how to conduct themselves in the course
2 of collective bargaining is that you are up against
3 an issue that, if the union chooses to depart from a
4 peaceful bargaining table and resort to strikes and
5 picketing.....

6 THE COMMISSIONER: I don't want you to
7 misunderstand me. I am not talking about the technique
8 of bargaining. I am talking about the understanding of,
9 you might call it, the philosophy of social attitudes
10 and actual economic conditions.

11 MR. ADAMS: I think there has been a
12 deplorable lack of understanding of what the whole basis
13 of collective bargaining is on both sides.

14 THE COMMISSIONER: There is no
15 mystique of collective bargaining, is there? I understood
16 from what you said that it was simply the multiplication
17 of individual bargaining.

18 MR. ADAMS: Yes, it is, but if I may
19 return to this proposition that it usually commences with
20 union demands which they have formulated as being
21 desirable from their point of view, and it is the
22 intention, surely, of the authors of the legislation, of
23 anyone who could be said to be the author of collective
24 bargaining, that these demands are going to be tested
25 out in the crucible of a bargaining session at which they
26 will be examined as to their validity, feasibility, what
27 they cost, can they be provided, will they produce the
28 results desired and so on, and what other ill effects
29 will flow if you get this particular thing. Quite often
30 unions are persuaded to withdraw a demand because they



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1 see that even if it were granted it would not do them
2 any good; it may do them harm.

3 If I might give you an amusing
4 interlude, I remember once in the course of some very
5 important industry-wide bargaining the union had about
6 50 items on its agenda, and one of them which I will
7 just call item 14 because in my recollection that is
8 what it was: It had nothing to do with money, I don't
9 even remember what it was, but it was a jumble of words
10 that did not make very much sense, but it was a clause
11 they wanted inserted in their collective agreement. The
12 first time I read it I thought that I simply could not
13 understand why they would ask for this; it seemed to be
14 something that will favour the employer's position and
15 not the workers. So, I put it aside with the intent of
16 getting an explanation. So, when we met and we came to
17 the item I questioned the union fellow, "What do you
18 mean by it?". Well, he did not seem to know. So, he
19 sort of begged off explaining it --- "We will consider
20 it and talk about it". Probably about ten different
21 times we came to this point where I would say, "Now,
22 what do you mean by this? Do you really want it in?",
23 and so on, and he would always back off. Well, I wanted
24 eventually to get rid of the point, so the next time it
25 came up I asked if they were still unwilling to talk
26 about it and I said, "Let us put an end to it. We will
27 grant the request and we will put this in the collective
28 agreement precisely as you have put it down," and his
29 reaction was, "Wait a minute. I am not so sure we want
30 it. I don't know what it means. There mere fact you are



1 willing to give it to me makes me suspicious there must
2 be something wrong with it." Well, of course, there
3 was something wrong with it and I never did intend to
4 give it to them. I was only using it as a strategy to
5 get rid of the item.

6 Here was a situation where someone
7 back at the head office of the union had concocted a
8 clause and suggested it to them, and in the course of
9 doing so had made a grievous error and had asked for
10 precisely the opposite of what he wanted, and there it
11 stood. Now, like I say, that is just an example where
12 they can withdraw something. It may have been put
13 forward by mistake. We may be able to show them that, in
14 the circumstances, this would not do them any good and
15 that they can withdraw and you can persuade them to
16 modify it, both the contract language and the economic
17 proposals.

18 Quite often you have to do this by
19 substituting another idea. For example, in one recent
20 set of negotiations I substituted a proposal for
21 continuing a benefit to an injured or sick employee for
22 a much longer period than they had ever thought was
23 possible, in order to persuade them to give up something
24 else which I did not think was feasible. So, this is the
25 sort of thing that happens in normal good faith
26 bargaining: one man's ideas are weighed against another
27 man's. Now, when there is a strike, all this disappears,
28 but it again resumes when it is time to settle the
29 strike.

30 THE COMMISSIONER: You have dealt with



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1 the picket line. What have you to say about the
2 employment of those who are called strikebreakers?

3 MR. ADAMS: Well, a strikebreaker or a
4 scab is a very artful propaganda term.

5 THE COMMISSIONER: Don't those mean
6 different things?

7 MR. ADAMS: Not necessarily.

8 THE COMMISSIONER: I understood the
9 strikebreaker was somebody brought in from the outside.

10 MR. ADAMS: Yes, a new employee,
11 whereas a scab is more frequently the appellation given
12 to a worker who has returned. But the word "scab" is
13 applied to both. I say they are propaganda devices
14 because if one concedes, as I think you must, that the
15 employer is entitled to break the strike by any lawful
16 means at his disposal, including the hiring of
17 alternative employees ----

18 THE COMMISSIONER: Is that consistent
19 with the condition or the principle of full employment?
20 Didn't it originally assume a reservoir of unemployed
21 people?

22 MR. ADAMS: Well, let me put it this
23 way: I am concerned with the maintenance of the right
24 of the employer to engage alternative employees if he
25 can find them.

26 THE COMMISSIONER: I again suggest
27 that really in strict terms that is a liberty because
28 there is nothing to prevent it, so far, and I think it
29 different because a right is something affirmative that
30 is created by human law.



1

MR. ADAMS: I have no particular predilection
for any particular --- essentially if you are entitled
to do this the mere fact that an economic consideration
may make it possible for you to do it, and this is so
apt in the case of a large union of 10,000 men, if they
all go on strike, you cannot feasibly replace 10,000 men
with 10,000 others.

2

THE COMMISSIONER: From your experience,
where would you place the number of employees who would
present that difficulty in the event of a strike?

3

MR. ADAMS: Where would I place the
number?

4

THE COMMISSIONER: Yes, assuming now
that they must be reasonably skillful; not ordinary
common labourers, because that class of workman has
more or less disappeared.

5

MR. ADAMS: The employer of a large
group of skilled or semi-skilled people has no hope of
breaking the strike by hiring alternates.

6

THE COMMISSIONER: You will go that far?
We can begin at the extremes: I understand you have
unions existing of ten men. If they are semi-skilled,
could they be replaced?

7

MR. ADAMS: Yes.

8

THE COMMISSIONER: Well, I would like
to know ----

9

MR. ADAMS: You will find that in
the employment of alternates it is usually effective in
small bargaining units.

10

THE COMMISSIONER: Could you suggest



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1 approximately an upward limit of a small bargaining unit
2 --- 100, 200, 300?

3
4 MR. ADAMS: That again would depend
5 upon the employment pool in the particular locality,
6 the duration of the strike. Perhaps you might import
7 labour from another locality. I don't think you could
8 feasibly define it in terms of numbers.

9 THE COMMISSIONER: You could if you got
10 beyond, say, 500 men: Do you know of any instance in
11 your experience in which a staff of 500 has been
12 replaced?

13 MR. ADAMS: Not offhand, but certainly
14 they would not be replaced all at once, but there could
15 be a period of erosion whereby this would take place
16 gradually. I am concerned principally that this course
17 of conduct is available to the employer. If he cannot
18 take advantage of it because he can't find the people
19 because he needs too many to be a practical move, that
20 does not take away his right or his liberty or whatever
you are going to call it.

21 /FN/SS THE COMMISSIONER: I would be interested
22 to know how you reconcile that with subsection (2) of
23 Section 1 of the Labour Relations Act where he is
24 declared to continue to be an employee as far as the
25 strike is concerned.

26 MR. ADAMS: I think there has been a
27 most unfortunate misunderstanding with respect to this
28 section.

29 THE COMMISSIONER: For what reason?

30



1
2 MR. ADAMS: I suggest that its purpose
3 and its meaning was simply to provide that a person
4 who ceases to work because he is a strikebreaker does not
5 automatically become or has not automatically terminated
6 the relationship of employer and employee.

7 THE COMMISSIONER: But don't you think
8 it is the necessary logic that it should be continued
9 because in England my understanding is that the men bring
10 about the termination of their relation of employee
11 and if they strike before that they are guilty of
12 breaking the contract and therefore being free from a
13 contract they can strike. This to me is much more
14 logical because when they strike they cease work with
15 the intention and contemplation of returning to work.

16 MR. ADAMS: I gather from the argument
17 Mr. Jackett put up in the Royal York case that there
18 was a time when in English law this was the case, that
19 in order to strike you had first to quit.

20 THE COMMISSIONER: I think that is the
21 law yet, isn't it?

22 MR. ADAMS: It may be so in England.

23 THE COMMISSIONER: That is what I mean,
24 in England.

25 MR. ADAMS: I don't think it is the
26 law here.

27 THE COMMISSIONER: I know, this section
28 contemplates that very thing and makes a specific
29 provision.

30 MR. ADAMS: I think that argument
31 really cannot be supported even in England, but that is



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1 beside the point. However, the purpose of this section
2 --- you see, they begin by saying, "For the purposes of
3 this Act". Now, it is not easy to find always in these
4 somewhat ineptly drafted statutes the purposes, but one
5 of the purposes definitely is to enable employees to
6 choose a union and have it certified as a bargaining
7 agent.

8 THE COMMISSIONER: But this does not
9 commence until there is a strike.

10 MR. ADAMS: But just a moment.
11 You can have a strike before your union is certified.

12 THE COMMISSIONER: You can't have a
13 legal strike.

14 MR. ADAMS: This section doesn't say
15 anything about a strike being legal or illegal.

16 THE COMMISSIONER: I would assume that
17 when the law says, "strike" it means a lawful strike.

18 MR. ADAMS: For the purposes of the
19 Act he continues to be an employee even when he goes on
20 strike. Now, the section does not say what happens if
21 some other Act intervenes.

22 THE COMMISSIONER: No, it doesn't, I
23 quite agree.

24 MR. ADAMS: Such as a dismissal by the
25 employer.

26 THE COMMISSIONER: But not because he
27 is absent, that is the vital thing.

28 MR. ADAMS: Well, I can find nothing in
29 this Act that suggests that an employer may not defend
30 himself by dismissing his employees.



1 THE COMMISSIONER: Dismissing them for
2 what reason?

3 MR. ADAMS: Because they have not come
4 to work.

5 THE COMMISSIONER: It is only a
6 question of interpretation and what you suggest is in
7 the face of the actual language.

8 MR. ADAMS: I grant you the section
9 does present difficulties, but in this decision of the
10 Supreme Court of Canada in the C.P.R. and Zambri case
11 I think most of the judgments make it abundantly clear
12 that the employer can replace these people by notice
13 and that circumstance takes away the man's job and
14 makes him a non-employee.

15 THE COMMISSIONER: That was not
16 necessary to the decision in that particular case.

17 MR. ADAMS: No.

18 THE COMMISSIONER: If that were the
19 view of the court it is not what we call a precedent
20 and all I am concerned with now is the meaning of that
21 language as it ought to be ascertained in the light of
22 the purpose of that Act itself which is to bring about
23 a reconciliation between management and men and at the
24 same time permitting no break in that relationship.

25 MR. ADAMS: Now, if one assumes that
26 the section means or if it is proposed to amend it so
27 that it will mean that once an employee goes on strike
28 he cannot be dismissed and cannot be replaced ---

29 THE COMMISSIONER: There is nothing in
30 the Act that says that because it simply says you cannot



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1 dismiss him because of absence from his work on strike.

2 Now, that is a perfectly clear conception.

3 MR. ADAMS: I am sorry, I can't read
4 the section as forbidding dismissal.

5 THE COMMISSIONER: While he is off
6 on strike and he commits a crime which normally would
7 give the right to dismiss him then the language does not
8 seem to have any application.

9 MR. ADAMS: Or if he is dismissed for
10 any reason other than having gone on strike.

11 THE COMMISSIONER: Yes, that is
12 exactly what it seems to me.

13 MR. ADAMS: Surely if an employer
14 says to me, "I have a man on strike, I have found
15 another person whom I am satisfied to take his place,
16 I will never need this man again and in all sincerity
17 I tell him so", is this an offence?

18 THE COMMISSIONER: Of course, I can
19 well understand the management saying that, but the
20 question is not what the management says, but rather
21 what the statute says.

22 MR. ADAMS: Yes. But as I say, if
23 --- well, this is what I think it meant, that he was
24 to maintain a sort of statutory relationship of employee
25 for the purposes of the Act all during his strike unless
26 some other incident occurred which terminated it.
27 Now, this means that he could be counted as one of those
28 entitled to vote in a representation election and he
29 can ---

30 THE COMMISSIONER: Now, just a moment,



Terente, Ontario

1 the representation is in the rear, we are now in the
2 strike. Before this applies, before this has any
3 application we are in the condition of striking.

4 MR. ADAMS: Yes, but let me give you an
5 illustration. This is the first time to my knowledge
6 that this subsection was considered by the Labour
7 Relations Board. We had a situation here in a Toronto
8 plant where the employees did in fact go on strike.

9 THE COMMISSIONER: Was it a lawful
10 strike?

11 MR. ADAMS: Yes.

12 THE COMMISSIONER: That is, the
13 conciliation provisions had all been complied with?

14 MR. ADAMS: Yes, and there was a strike.
15 Now, the strike had run for several weeks and some
16 employees had returned to work through the picket line:
17 Others had been dismissed because of violence or improper
18 actions on the picket line: Others had quit, asked for
19 their papers and disappeared. We had really about five
20 different categories of people and at this point another
21 union shows up and says, "We are going to apply for
22 certification to represent these people". Now, it is an
23 open season so far as the Board is concerned, so they
24 have to consider this new application for certification
25 and then in the course of doing so they decided that
26 there would have to be a vote taken, the employees would
27 be asked to choose between the union they had when they
28 went on strike and the union which now proposed to
29 represent them. And so the question arises immediately
30 as to the status, the voting right of several of these



Terente, Ontario

1 categories. Now, quite clearly those who had quit and
2 departed and were working somewhere else were out of
3 the orbit of the scene. The union contended that
4 those whom the company had dismissed for, let us say,
5 improper conduct on the picket line must have the right
6 to vote. The Board reserved the question. Then, I
7 contended that anyone whom we had dismissed for any
8 reason was not entitled to vote, whereas the union
9 said anybody who went on strike was protected and was
10 an employee for the purposes of the Act and therefore
11 must have the right to vote. It is my recollection that
12 the Board decided that all the people who had gone on
13 strike would prima facie be entitled to vote, but they
14 would strike off any who had actually quit voluntarily,
15 but that everyone else could vote. They segregated the
16 balance of the groups because they were not quite sure
17 of their position. The result of the proceeding was
18 that there was such an overwhelming majority in favour
19 of the new union amongst those who were clearly
20 entitled to vote that it became unnecessary to resolve
21 the question with respect to the other small groups.
22 But I well remember that we had quite a long discussion
23 at the time on what this section meant and I came to the
24 conclusion, I think in the course of the proceedings,
25 that for this purpose of the Act, that is for
26 determining who can vote in this kind of choice between
27 two unions who went on strike, one is still a voter even
28 though he has no intention of coming back to work for
29 us.

30 THE COMMISSIONER: That is a possible



1 interpretation.

2 MR. ADAMS: Now, this makes sense of
3 the section. That is at least one purpose of the Act
4 to which this can apply.

5 THE COMMISSIONER: It makes sense to me
6 in another aspect.

7 MR. ADAMS: It may well be and there
8 are other interpretations. Now, I think the court, with
9 respect to Chief Justice McRuer, went sadly astray in
10 one of its statements in the course of a judgment where
11 he said that one of the purposes of the Act was the
12 penal section, that is, for the purpose of imposing
13 penalties. I for the life of me can't follow the
14 reasoning when he says that a section which says if you
15 commit such and such an offence or an offence against
16 such and such a section you are liable to a fine, that
17 that is the purpose of the Act. It is pretty farfetched
18 reasoning and I think it was purely inadvertence on his
19 part because usually he is a very accurate man.

20 THE COMMISSIONER: May we continue
21 this at half past two?

22 MR. ADAMS: Thank you very much.

23
24
25 ---Luncheon adjournment.
26
27
28



Toronto, Ontario

1 ---On resuming at 2:30 p.m.

2

3 MR. POLLOCK: Mr. Adams, I wonder if
4 you might set out for us the techniques or the methods
5 of enforcing the strike from the standpoint of the union
6 and workers and the methods and techniques that ought
7 to be allowed the employer to combat the strike.

8 MR. ADAMS: Well, to enforce the
9 strike it seems to me that the workers ought to be
10 limited to the mere action of withdrawing their services,
11 withholding their services plus whatever sympathetic
12 response that action inspires other people to take; that
13 is, if I as a customer of the struck firm feel like
14 withholding my custom because there is a strike I
15 obviously can do so and I might be so inspired by
16 learning that the people have gone on strike. But I can
17 see no basis for the strikers in any way coercing me
18 to do either by blocking my access to the plant or the
19 store or by in any way preventing this business from
20 delivering the goods to me that I may purchase over the
21 telephone or otherwise. So that properly viewed
22 the action of striking is the withdrawal of service
23 which is intended to embarrass the employer and does,
24 of course, embarrass him. I think our difficulties
25 arise when this mere withdrawal of service does not
26 accomplish its purpose, that is, it does not create
27 sufficient embarrassment to force capitulation. Then
28 they move on to auxiliary remedies, such as seeking to
29 prevent that employer from receiving goods already
30 manufactured or shipping goods already manufactured or



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1 carrying on, perhaps, his normal operation of manufac-
2 turing or running a store, or whatever it may be, by
3 using the supervisory force, extra employees, et cetera.

4 MR. POLLOCK: Would you permit the
5 striking employees to demonstrate in some manner at the
6 plant with placards truthfully explaining that the
7 company has refused to come to an agreement with them
8 and they consequently are on strike?

9 MR. ADAMS: You say would I permit it?
10 I would think that what the permissive section of the
11 Criminal Code intended to permit was demonstrations.

12 MR. POLLOCK: I would prefer if you
13 would tell us in the system, in your analysis, what
14 ought to be permitted.

15 MR. ADAMS: I think picketing for that
16 limited purpose, namely, advertising, demonstrating,
17 is no longer a reasonable course of action and that we
18 can accomplish the same result, if it is desired, by
19 the use of placards which could be officially posted.
20 I grant you that many employers might hold up their
21 hands in horror at the suggestion.

22 THE COMMISSIONER: But if they are not
23 actually imposing upon any so-called rights and there
24 is no law to prevent it, how can you claim that they
25 ought not to do it?

26 MR. ADAMS: As I say, if they confine
27 their picketing within the limits contemplated by those
28 sections of the Criminal Code, there would be no
29 controversy about it. I would not be making my
30 suggestion. The fact is that in so many cases picketing



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1 has gone beyond these limits and has been an abuse. I
2 think the time has come to say that we are tired of
3 abuses, and the way we get rid of the abuses is that
4 we should stop picketing altogether. "We will give you
5 something else which is just as good a substitute."

6 MR. POLLOCK: What is that?

7 MR. ADAMS: Namely, placards.

8 MR. POLLOCK: So you would eliminate
9 all picketing at the premises?

10 MR. ADAMS: Yes.

11 MR. POLLOCK: Would you permit the
12 union to advertise in the newspapers as well?

13 MR. ADAMS: I have no control over it.
14 I see no reason why they should not do all the advertising
15 they wish to do.

16 MR. POLLOCK: Would you permit them
17 to correspond with the customers of the struck plant and
18 the suppliers of the struck plant?

19 MR. ADAMS: Again I can see no reason
20 for interfering with any such lawful activity. If they
21 wish to write letters to the company's customers they
22 are perfectly free to do so. There is no law that I
23 know of to prevent them doing so. If they want to
24 run programs on television or make radio announcements,
25 I have no objection to that at all. As far as I am
26 concerned, anything they do which is in the area of
27 creating an opinion on their side, persuading people,
28 that is quite all right. I am only objecting to the
29 excesses, the unlawful, the coercive actions. I don't
30 think it is practical to expect any police force, however



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1 augmented you might conceive it to be, I don't think
2 they can effectively police a strike situation if there
3 is going to be unlimited picketing.

4 MR. POLLOCK: Assuming that the
5 picketing is not unlimited. Assuming that it is picketing
6 with two or three pickets with truthful signs and they
7 are not blocking the sidewalk and marching back and
8 forth in front of the plant, and nobody is having any
9 difficulty in gaining physical access to the plant: In
10 those circumstances what would you say?

11 MR. ADAMS: If picketing was always so
12 confined, I would have no objection to picketing. I
13 am only putting forward these suggestions of placards
14 on the basis that perhaps there may still be some real
15 need for them to do some advertising of the fact. If so,
16 why not let us devise a more peaceful, more sensible way
17 of accomplishing it. I rather expect that those who have
18 to picket, the picketers themselves, would welcome such
19 a substitute because it cannot be a very pleasant
20 activity, to be walking up and down all the time carrying
21 these signs merely for this purpose of advertising.

22 THE COMMISSIONER: Would you sympathize
23 with complete unionization of workers who would be fit
24 to work in any industry you have in mind, so that
25 effectually the operation would be prevented by the
26 collaboration of the labour force as an entirety?

27 MR. ADAMS: I am not quite sure I
28 follow that. Do you mean complete unionization?

29 THE COMMISSIONER: All workers whom
30 you might look to to take on.



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1

MR. ADAMS: As substitute employees?

2

THE COMMISSIONER: You would not get them because they would be organized against assisting you. What would you say to that as social policy?

5

MR. ADAMS: You mean for the government to compel everyone to belong to a union?

7

THE COMMISSIONER: No, if the men themselves agreed and formed themselves into a union that would boycott in one sense any employment with you. Would that be good, wholesome, or would it be an injurious policy?

12

MR. ADAMS: I don't think it would be wholesome, but I don't see how I could prevent it or complain about it.

15

THE COMMISSIONER: You would not complain about that?

17

MR. ADAMS: If people don't want to work with me, then that is it.

19

THE COMMISSIONER: And they don't want to work because they have pledged themselves not to.

21

MR. ADAMS: Whatever the reason, if they think that I am an objectionable employer.

23

THE COMMISSIONER: If there is no objection to them agreeing to do that, there is no basic act of injury to you; if the government steps in and says, "You can't work", what would you say?

27

MR. ADAMS: I would say if the government should ever step in and say, "You must belong to the union", I think the legislation would be intolerable. I think it would be an unwarranted trespass

29



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1 upon individual rights.

2 THE COMMISSIONER: Do you think that
3 merely saying it is a trespass on individual rights is
4 sufficient in itself to justify its negation?

5 MR. ADAMS: Well, how do you justify
6 it to the electorate?

7 THE COMMISSIONER: The purposes of
8 social ---- the social purpose of able human beings
9 in a society in which material wants are today presenting
10 the most demanding attention can be fairly enjoyed by
11 the total community. You see, you are really at the
12 extreme point of laissez faire, that is, the individual
13 is a little kingdom unto himself, and he has his rights
14 of property which have come down through centuries and
15 you can't touch those, you can't interfere with them.
16 Now, have we reached --- this is a question I am putting
17 to you and there is nothing dogmatic about the question
18 or possibly about the answer --- would you think social
19 policy that is consistent today with our ethical outlook
20 on life generally to embark upon any such policy of
21 that nature ---- not singly, but perhaps, along with
22 other regulations?

23 MR. ADAMS: It seems to me the very
24 nature of the trade union is that it has to be a
25 voluntary society. It cannot depend upon compulsion,
26 by government at least. The moment you create such a
27 thing as a statutory union which everyone must belong to
28 that is ---

29 THE COMMISSIONER: Suppose you
30 eliminate that and say "You can't fill in these vacant



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1 places which have been temporarily vacated by workers"?

2 MR. ADAMS: Without joining the union?

3 THE COMMISSIONER: Yes.

4 MR. ADAMS: I can't quite see the
5 point of this, really.

6 THE COMMISSIONER: The point of it is
7 perfectly clear, it seems to me, but I am not concerned
8 with the point. The point is that it will not enable
9 you to have a cessation of your work and at the same
10 time enable you to continue through the working
11 capacities of others.

12 MR. ADAMS: If one assumes that the
13 struck employer is able to hire replacements it will not
14 stop him hiring them to simply interpose a barrier
15 which says, "If you hire this man he must join the
16 union".

17 THE COMMISSIONER: I am not suggesting
18 that. Let us eliminate any matter of compulsion as to
19 joining a union. Suppose as a matter of policy --- that
20 is all it is, and it is only speculative; it is only
21 the imaginative ideas which your paper is characterized
22 by, I think you introduced some new ideas. Suppose one
23 of these new ideas in order to create a greater
24 equalization of power, where all the worker can do is to
25 tell people that he is on strike and supplicate, you
26 might call it, their sympathy, so far as possible their
27 assistance, suppose they come in and say he still
28 remains at a very great disadvantage; he is trying to
29 assail a citadel with fortifications all around and in
30 order to balance out this power that is asserted from



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1 both sides we will say to you as the employer, "You
2 can't employ other people while your men remain on
3 strike because we have preserved their employee
4 relationship".

5 MR. ADAMS: Oh, I see. Well, the
6 moment you say to the employer in that circumstance,
7 "You cannot avail yourself of this method of resisting
8 the strike", then you have automatically given great
9 power to that group of strikers which they do not now
10 possess, and you have taken away some of the powers that
11 the employer has. How can anyone be justified in taking
12 --- I would have to call it taking sides.

13 /FN/SS THE COMMISSIONER: Isn't our whole
14 law based upon taking sides? What about your law
15 against combinations? They don't allow you to combine
16 with me to hold up the prices. Why? Because it is bad
17 social policy.

18 MR. ADAMS: Yes, but ---

19 THE COMMISSIONER: The mere fact that
20 it restricts action is nothing in itself sufficient to
21 make it ---

22 MR. ADAMS: Restriction is not
23 necessarily bad, but if I may come back to my original
24 example, here you have a dispute and no government knows
25 who is right about it, there are two sides to it ---

26 THE COMMISSIONER: What do you mean in
27 that case by "right"? How could there be anything more
28 right?

29 MR. ADAMS: What is the correct
30 solution, should the employer yield, should the union



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1 yield or should there be a compromise? Now, if you are
2 going to say to the employer, "We don't want you to
3 resist the strike by bringing in alternative employees",
4 then you must be taking the side of the union.

5 THE COMMISSIONER: You don't have to
6 say that when you are trying to equalize things.

7 MR. ADAMS: What is it you are
8 equalizing --- bargaining power?

9 THE COMMISSIONER: Economic power.

10 MR. ADAMS: Well, this finds its own
11 equilibrium. In some cases the union's economic power
12 is far greater than that of the employer, in fact I
13 think in too many cases, but in other cases it may not
14 be as great as the employer's power and this is why
15 sometimes a strike is foolish.

16 THE COMMISSIONER: Well, in that case
17 it wouldn't be necessary.

18 MR. ADAMS: Well, we have strikes
19 foolish and otherwise, but some strikes fail simply
20 because the employer's bargaining power is too great for
21 the union to prevail against him and in my opinion they
22 should fail. This is the law of life: If you cannot
23 have enough strength out of your combination of work
24 by withdrawing your services, then you have no right to
25 win that particular battle.

26 THE COMMISSIONER: Well, I don't
27 agree with your conception of the processes and ultimate
28 conditions of a biological product which we call men at
29 all. I don't think they are brought up in a state of
30 perpetual hostility to one another.



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1 MR. ADAMS: Oh, no, of course not.

2 THE COMMISSIONER: That is what you are
3 suggesting, isn't it?

4 MR. ADAMS: No, I am suggesting that
5 they have gone through their discussion stage, of course,
6 and they have failed to persuade this employer by
7 rational argument and reason to alter his position and
8 I am quite sure that in at least half of the cases nobody
9 could persuade the employer to change his position
10 because he is right.

11 THE COMMISSIONER: Well, you have
12 greater confidence in that word "right" than I am
13 afraid I have, but you may be right in turn.

14 MR. ADAMS: You see, it is all very
15 well for people who have never been employers engaged
16 in collective bargaining to theorize that there must
17 always be a reasonable solution, you must be able to
18 do something more than you have done. I am sorry to
19 say that no matter how reasonable an employer may be,
20 no matter how social-minded he may be he cannot avoid
21 a strike somewhere in the course of his industrial
22 life.

23 THE COMMISSIONER: You have to qualify
24 it that way. This is all speculative.

25 MR. ADAMS: If he gives easily and
26 gracefully he then becomes categorized as a pushover by
27 the union and the demands keep increasing somewhat in the
28 same ratio to your generosity. If you are one of these
29 hard bargainers who gives no more than you have to at
any particular time, you get categorized in that way,



1 and in the long run both types of employers run into
2 these difficulties.

3 THE COMMISSIONER: But I think what
4 you are overlooking is the fact that you might say the
5 management, as the general term describing those in
6 control of a productive facility, management is the
7 beneficiary for many quarters of society. They are today
8 in the crudest ways the beneficiaries of subventions and
9 subsidies, assistance in tax exemptions, all of these
10 things for the purpose of encouraging them and enabling
11 them to carry on business. That is not universal, but it
12 has become so prevalent that you can't talk about
13 private enterprise in this country or, as Professor
14 Galloway says, in North America because it is a mixed
15 economy which means this, that the public has
16 necessarily been forced into a particular participation
17 in the maintenance of means of employment. All it
18 means is that any restriction that is placed upon either
19 side, labour or management, is a restriction that is
20 going to be justified only by the circumstances in which
21 it finds itself brought into existence. There may be
22 sound considerations against it, there may be other
23 sound considerations in favour of it and the whole
24 thing resolves itself into a question of social policy.
25 Can you question that fact? I mean justifiably?

26 MR. ADAMS: I don't deny that if
27 you consider management as a whole that they are a
28 beneficiary of many things, as you say, but there is
29 still a great deal of private enterprise. There are
30 still a great many managements who are beset by government



1 regulations rather than benefited by them.

2 THE COMMISSIONER: Well, they would be
3 beset only in the concept of what you see to be their
4 right, what we term laissez faire, do as they please.
5 In that sense, of course, they are restricted, but why
6 are they restricted, why has laissez faire been brought
7 down within a strict limitation? It is a matter of
8 public policy.

9 MR. ADAMS: There is a policy behind
10 most legislation.

11 THE COMMISSIONER: We are supported
12 on every hand by society, consciously or unconsciously.

13 MR. ADAMS: But to apply your
14 suggestion to a practical situation I have in mind a
15 small company back about two years ago employing about
16 30 people, as I recall --- there was the usual
17 bargaining and then eventually a strike accompanied by
18 picketing. There was no injunction, although there was
19 some violence but not in a serious way on the picket
20 line. There was some attempt to force people to keep
21 from going through. From the moment the strike started
22 approximately one third of that working force went
23 through the picket line and continued to work and day
24 by day it would be added to, another few would come in.
25 Then, they hired probably a dozen new people until they
26 got to the point where they had their shop fully staffed
27 and they could do without the others no matter how long
28 they remained on strike and there is the way it stands
29 today after two years.

30 Now, if I understood your suggestion it



1 would be that that company would not be permitted to
2 hire that ten or twelve outsiders.

3 THE COMMISSIONER: I was just saying let
4 us imagine a situation of that sort.

5 MR. ADAMS: What about the original
6 one third of the work force that did go on strike?
7 Should they be permitted to work?

8 THE COMMISSIONER: Suppose you allow
9 the striking force to go back?

10 MR. ADAMS: But if you say you cannot
11 hire alternatives ---

12 THE COMMISSIONER: I am putting a
13 possibility, that is all.

14 MR. ADAMS: I know, but I say it would
15 seriously handicap that particular employer's ability
16 to resist that strike.

17 MR. POLLOCK: The union says that when
18 you say you can't picket you seriously impair their
19 ability to further the strike. Is it your position that
20 there is a balance between the power of the union, the
21 employees, to go on strike, and go home, sit in their
22 homes or meet in their hall and on the other hand the
23 employer is free to employ additional personnel, sub-
24 contract his work, temporarily or permanently fire any
25 of these people --- all these things. Is that a balance
26 in your mind?

27 A. Of course it is a balance.
28 What these people have to sell is their labour. They
29 say, "We refuse to sell it to you at the price you have
30 offered, we are going to withhold it until you change



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1 your mind".

2 THE COMMISSIONER: On that basis I
3 think you are logical, it is just like selling any other
4 material, but you admitted that that was only a partial
5 conception of the relation of a worker to his work.

6 MR. ADAMS: I admit that labour should
7 not be treated merely as a commodity, but I also say
8 that when it suits their book the unions treat it as a
9 commodity and this is what they do when they strike:
10 They treat it as a commodity, they withhold it.

11 THE COMMISSIONER: I would not say
12 that at all. They cease their relationship to the
13 business. Their relation itself cannot be looked upon
14 as a commodity. In any event, that is simply a social
15 conception. I think, though you have answered my query,
16 and you have maintained a logical position.

17 MR. ADAMS: I can think of no
18 justification for putting any further restrictions on
19 either the right to resist or the will to resist and I
20 am particularly concerned about the small employer who
21 more frequently than the large one can defend himself
22 by hiring alternates.

23 THE COMMISSIONER: You may remember I
24 asked you this morning if you can give any idea of the
25 number limitation to which that reference would apply
26 where at least, as you put it, semi-skilled workers were
27 employed.

28 MR. ADAMS: As I say, it depends a
29 great deal on what kind of skills you can utilize.
30 I gave you the illustration of a group of less than 100



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1 who carried on a very effective strike without
2 picketing. Now, each of those men was highly skilled,
3 couldn't be replaced in this country.

4 THE COMMISSIONER: Oh, yes. Once you
5 put either side in the position of a monopoly, then you
6 have an irremovable fact.

7 MR. ADAMS: Now, we do have, unfortunately,
8 a monopoly aspect of unions to consider, particularly
9 craft unions. They can and do become very powerful
10 monopolies. In addition to being bargaining agents they
11 are also employment agencies through whom you must hire.
12 If you don't go to them you haven't any chance of hiring
13 that artisan because it is the only place he is
14 available.

15 THE COMMISSIONER: That is equivalent
16 really to putting everybody into a union.

17 MR. ADAMS: That is craft unions.

18 THE COMMISSIONER: I know, you are up
19 against a closely-knit organization.

20 MR. ADAMS: As soon as they succeed
21 in organizing all these craftsmen by whatever method
22 they use, let us assume it is all voluntary and all
23 very proper, they nevertheless become an absolute
24 monopoly and like any other monopoly can be subjected
25 to restrictive legislation and perhaps have to be in
order to protect the public.

26 It is rather sad, I suppose, but the
27 statistics of the Labour Department, the first section
28 that has come out, indicates that the majority of
29 illegal strikes for recognition in this province have



1 been by craft unions in the building trades.

2 THE COMMISSIONER: Well, there is no
3 such thing today as a lawful strike for recognition.

4 MR. ADAMS: No, it automatically has
5 to be unlawful, and yet there is a great deal of it
6 going on.

7 MR. POLLOCK: In the construction
8 industry?

9 MR. ADAMS: Yes, and picket lines for
10 the purpose of inducing people to join unions are most
11 common. Under the heading of lack of enforcement I
12 think it is an appalling situation that all these
13 instances of unlawful conduct, that is, unlawful in the
14 sense that they are contrary to this statute, are going
15 on and there is not a single thing being done about it.

16 THE COMMISSIONER: Well, that is to say,
17 you think that every time there has been a violation of
18 that Act there should be a prosecution?

RY/SS 19 MR. ADAMS: Not necessarily a
20 prosecution, but I do think it is a shameful disrespect
21 for the law, to pass a statute and make a whole lot of
22 offences and then make no provision for enforcement.

23 THE COMMISSIONER: I quite appreciate
24 that.

25 MR. POLLOCK: There is provision for
26 enforcement. I think the figure of unfair labour
27 practice, leave to prosecute, 63% were withdrawn. Is it
28 not a fact both in industry and in the construction area
29 of that industry that employers want to settle the
30 dispute and are not interested in punishing the employees?



Don't they immediately the employees go back to work seek to abandon all prosecutions and all legal actions --- there has only been one injunction, I think, that has been proceeded with all the way through.

MR. ADAMS: This is quite so. The employer is naturally a person who is operating a business and trying to make money. He is not a policeman of the labour law.

THE COMMISSIONER: But he ought to be a policeman of his own interests, and this violation is against his own interests.

MR. ADAMS: Not necessarily.

THE COMMISSIONER: It is against what you call a right. If it isn't, then you have nothing to do with it.

MR. ADAMS: Yes, but what is the employer's interest? Let us take the case of the contractor who has undertaken to build a building, and he has a time schedule and he is bonded to complete it within a certain time. In the course of his very efficient program he has a work stoppage and a picket line and the whole thing comes to a stop. Now, true he wants to get over this work stoppage quickly. Now, if he goes down the Labour Relations Board and says, "Will you give me a declaration that what is going on is unlawful. Secondly, if I get that, will you give me permission to prosecute the offenders in the police court?", and if he gets it, and if he lays the charges, the work stays stopped during all of this --- the delays and the adjournments. He says, "I want to find



1 some way of getting these fellows back to work", and
2 when he gets to the Labour Relations Board he finds the
3 atmosphere is, "Why don't you make a compromise? Why
4 don't you do something to put an end to this?"
5 Everything points to this as being the practical
6 solution for him, and it is not surprising therefore
7 that in the great majority of cases solutions, compromises,
8 sometimes even induced by bribery are brought about.

9 THE COMMISSIONER: Do you think he has
10 to go to a labour board to get that sentiment?

11 MR. ADAMS: No.

12 THE COMMISSIONER: He has it to begin
13 with.

14 MR. ADAMS: Certainly, but as I say,
15 the Act says no one may initiate any proceedings except
16 that employer , and he is not willing in most cases.
17 Just a few weeks ago I had a strike in a large industry
18 which affected only a few installations in the Toronto
19 area, absolutely illegal, and from my point of view
20 unjustified, over a very trivial matter. Now, of course,
21 we could have rushed down to the Board and asked for a
22 declaration that it was unlawful. I don't know what
23 good it would do. I already knew it was unlawful and
24 so did the union, but we could have asked for leave to
25 prosecute, and very likely we would have obtained it.
26 The result would have been that that strike would have
27 spread province-wide if we had taken such a step. Now,
28 is it wise to put yourself in the role of a policeman?
29 It would stop all your business. Or, do you try to have
30 a little private meeting with the malefactors and get the



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1 thing straightened out?

2 THE COMMISSIONER: Suppose there was
3 an independent prosecutor and he attempted to prosecute,
4 could not the same consequences follow?

5 MR. ADAMS: Possibly, but not quite so
6 likely. I think we sadly need a public prosecutor for
7 labour offences under the Act. Now, I don't say that
8 in every case he should actually prosecute, but I do
9 think that he ought to be there checking into every
10 situation, finding out why it happened, issuing warnings,
11 and counselling them to obey the law. The law is a
12 mockery as it is.

13 THE COMMISSIONER: There is such a
14 thing as provocation, you know.

15 MR. ADAMS: There is, of course.

16 THE COMMISSIONER: They would have to
17 investigate both sides.

18 MR. ADAMS: They would have to do all
19 the investigating, certainly.

20 MR. POLLOCK: Assuming, Mr. Adams,
21 on your analysis that a prosecution is commenced by an
22 independent prosecutor against a union for illegal
23 activity, he would have to call as his witnesses in
24 that case management to testify against the union.

25 MR. ADAMS: Maybe, but not usually,
26 not to establish the fact of a work stoppage.

27 MR. POLLOCK: He would certainly have
28 to have someone to be able to testify to the facts,
29 and unless you provide a professional witness group
30 that exists in all areas of industry at all times, then



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1 the only people who are going to testify against the
2 union are management. They are the only two people on
3 the site before the problem arises.

4 MR. ADAMS: There are times when the
5 only evidence management can give of a work stoppage
6 is the fact that they are not working --- "They have not
7 come in today".

8 MR. POLLOCK: Assuming that is the
9 evidence, do you think there won't be that pressure on
10 management not to testify?

11 MR. ADAMS: No, it would be an
12 entirely different atmosphere if the prosecution is
13 taken out of their hands. At the moment the employer
14 can decide not to prosecute, but once that is taken out
15 of his area, where some public official decides whether
16 there will be a prosecution, then you have quite a
17 different situation.

18 THE COMMISSIONER: You have made that
19 very clear.

20 MR. ADAMS: Unless the situation has
21 changed for the better recently, there was at one time
22 instructions given to the Crown Attorneys of this
23 province to have nothing to do with prosecutions under
24 The Labour Relations Act. I know of employers who went
25 to Crown Attorneys and asked them and they said, "We
26 can't do anything about it. It is not within our
27 jurisdiction".

28 MR. POLLOCK: I can advise you that
29 that is not the case anymore.

30 MR. ADAMS: I find it rather puzzling



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1 that these things are considered serious enough to be
2 stipulated as offences and yet no policing.

3 THE COMMISSIONER: I suppose the
4 reason for that is that essentially these questions are
5 involved in a private relation between a group of
6 employees and an employer. This is essentially a
7 private relation. It is not an offence against the
8 public, it is really an offence against him, and that
9 may be why the Legislature has required the permission
10 of the Board to bring proceedings. Of course, I am
11 just speculating on the reason for it. However, that
12 strikes me as one. It is more or less of the quality of
13 private relation rather than general public law.

14 MR. ADAMS: Well, whatever the reason,
15 I think we would be better off without many of these
16 statutory offences than to have them without any
17 enforcement policy.

18 THE COMMISSIONER: I can appreciate
19 the fact that the indifference or flouting of one set
20 of laws tends to extend to all sets of laws.

21 MR. ADAMS: Then you have the other
22 gap as well that striking for recognition is illegal.
23 Picketing for recognition is not an offence.

24 THE COMMISSIONER: I think it has
25 been held that you cannot picket for recognition.

26 MR. ADAMS: Not in this province.

27 THE COMMISSIONER: It may be from
28 another province, but the language of the statute is
29 virtually the same.

30 MR. ADAMS: The word "picketing" is not



1 found in here.

2 MR. POLLOCK: It is not found in the
3 statute, but it is found in the common law. I think
4 nowhere in this legislation is the word "picketing"
5 used.

6 MR. ADAMS: That is correct.

7 MR. POLLOCK: As you open the
8 beginning of your brief you say that the relationship
9 created there is the collective bargaining relationship
10 and when that ends officially after conciliation the
11 parties are at liberty to act within that ambit and are
12 guided only by the common law.

13 MR. ADAMS: Let us not get confused.
14 You can have picketing that is not associated with a
15 strike.

16 THE COMMISSIONER: I think you will
17 find it has been held that the total structure of the
18 Act is such as to exclude any other than this means
19 provided by the Act for the certification of a
20 bargaining agent, not by means outside of that Act.

21 MR. ADAMS: If a picket line is put
22 on a construction project for producing a work stoppage.

23 THE COMMISSIONER: Isn't that really,
24 the foreman calls up in the nature of persuasion, calls
25 up a certain loyalty to unionization or labour or
26 whatever you may call it ---- this is the effect on the
27 mind because there is no such thing as a line. There
28 is no physical barrier. It is simply an idea that is
29 induced by a streak in men.

30 MR. ADAMS: It is intended to be just



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1 an idea.

2 THE COMMISSIONER: It would be
3 possible --- don't think I am expressing any opinion ---
4 it would be possible for men to say, "Well, we know
5 there is a strike. It makes no difference to us whether
6 they have drawn a chalk line or not. We are not going to
7 enter these premises".

8 MR. ADAMS: Right, sir. I am not
9 concerned with that. Anybody who feels he cannot work
10 and is willing to run the risks of breaking his own
11 employment contract in order to carry out his convictions,
12 that is quite another matter, but I still say in this
13 province it is possible to picket for recognition and
14 it is not an offence.

15 THE COMMISSIONER: Let me have your
16 opinion on this, and this is simply a means of
17 enlightenment: How influential do you adjudge a
18 picket line to be in inducing action which it so often
19 does --- it creates a stoppage? In the case, it may
20 be presently today, at Algoma, the steelmen did for
21 some time ignore the so-called picket line of the
22 bricklayers. How prevalent do you think that is or has
23 been in labour relations in this province?

24 MR. ADAMS: Well, it varies. Now,
25 there is a case where had it not been for the railroad
26 workers the plant would not have suffered the
27 embarrassment of a complete shutdown, that is, the
28 steelworkers were apparently prepared to ignore the
29 picket line of the bricklayers or carpenters for which
30 I congratulate them, I think they were quite sensible.



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1 But then you have some small group of railway employees
2 I believe working on a privately-owned railway ---

3 THE COMMISSIONER: Yes, the Algoma
4 Central.

5 MR. ADAMS: They refused to cross the
6 picket line and so all supplies to the plant are held
7 up and then they have to lay off thousands of people.

8 THE COMMISSIONER: Well, they did.

9 MR. ADAMS: Yes. Now, it is a rather
10 abnormal power that this small group of bricklayers
11 have over this firm through this loyalty of picket line
12 and so on ---

13 THE COMMISSIONER: I have only read
14 the newspaper articles on it. I don't know anything
15 about the complete accuracy of the report. The railwaymen
16 claimed that they had been threatened if they didn't
17 respect the picket line. Assuming that that is true,
18 that is all we can do here, what would you have to say
19 about it?

20 MR. ADAMS: Well, I think that the
21 railwaymen are probably magnifying the threats. Of
22 course, I, too have no way of knowing exactly what
23 happened, but picket lines are effective as a threat,
24 far more than anything else. There are plenty of
25 people who would go through a picket line to their
26 ordinary day's work if it were not for the fear that if
27 they do so something is going to happen.

28 THE COMMISSIONER: What I think is
29 clear to everyone is the complex nature of the social
30 situation that is created in such a circumstance.



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1 MR. ADAMS: That is so.

2 THE COMMISSIONER: It is pretty hard
3 to suggest it is more difficult of solution.

4 MR. ADAMS: It doesn't always --- the
5 threat, you say the men may say they are threatened
6 but there was a strike a few years ago in Guelph under
7 somewhat similar circumstances. We had the plant
8 workers going on strike or at least a section of the
9 plant workers going on strike and the company was
10 operating with other units represented by other unions
11 and carrying on as best it could. But in the course of
12 their business they had a railway siding and they needed
13 railway cars to come in. Now, these strikers, one of
14 their picketing devices, they had two men stand on
15 either side of the railway track and hold a thread
16 across the track to block the locomotives and trains
17 from passing through. That was the picket line, a
18 thread. There was no threat, just a thread and that
19 railway refused to break the thread. There was no
20 suggestion of threat.

21 THE COMMISSIONER: Let me see if you
22 agree with the deduction I made from that, that in such
23 a condition where the feelings of human beings are
24 aroused, where the interests are affected, where there
25 is a sense of unfairness on one side and a sense of
26 indignation on the other, the one thing that is required
27 from both is a modification of rigid positions.

28 MR. ADAMS: Quite so, quite so.

29 THE COMMISSIONER: Do you think that
30 has always been true?



1 MR. ADAMS: I think what we need more
2 than anything else is to rid ourselves, or at least those
3 of us who have it, of this notion that the picket line
4 is so sacred that you must never cross it, violate it,
5 you have no duty to investigate what it is all about ---

6 THE COMMISSIONER: Assuming that that
7 is so, now, can't you use precisely the same language
8 in relation to the employment of strikebreakers?

9 MR. ADAMS: Well, a strikebreaker ---

10 THE COMMISSIONER: I am dealing not
11 only with the sense of taking somebody else on.

12 MR. ADAMS: Well, he has a right I
13 think as an individual to say whether he wants that job
14 or not.

15 THE COMMISSIONER: But you can make
16 that remark about the action of one side assuming that
17 it does not violate the rules of law and I can see why
18 you can't apply it in the other case. What about the
19 impingement of the same restriction upon employing
20 outside persons?

21 MR. ADAMS: You mean to say to the
22 employer, "You must not bring this man in"?

23 THE COMMISSIONER: Yes, I wish you to point
24 out the distinction between the application in one case
25 and the application in another .

26 MR. ADAMS: I say here is an employer
27 who has employment to offer and here is a man who
28 is willing to accept it. Now, why does the government
29 interpose itself and say, "You mustn't take this job",
30 and, "You are not allowed to offer this job"?



1
2 THE COMMISSIONER: The man has a
3 placard announcing and walking up in front and saying:
4 "I am prepared to do this in my own interests. Why
5 do you come along and interfere and tell me to disappear?"
6 In each case you are interfering with what otherwise
7 is freedom of action.

8 MR. ADAMS: It depends on whose
9 freedom we are talking about.

10 THE COMMISSIONER: I am talking about
11 the freedom of the individual in the first place, the
12 freedom of the individual employer in the other.

13 MR. ADAMS: But the man who walked
14 off the job and who is carrying the placard, I said it
15 this morning and I say it again, he runs the risk of
16 somebody else taking the job at the price offered.
17 Now, if you are going to protect him from that risk ---

18 THE COMMISSIONER: All I say is the
19 lesson of these things is that nothing can be treated
20 as being made of cast iron like that, that is all.

21 MR. ADAMS: I am quite sure it is not
22 cast iron, but if we change the rules by saying, "You
23 may strike without incurring that risk", we will have a
24 lot more strikes than we have now.

25 THE COMMISSIONER: That may be, and that
26 may be a reason for not doing it.

27 MR. ADAMS: It will so destroy the
28 employer's role in collective bargaining that the
29 collective bargaining can't function.

30 THE COMMISSIONER: That remains to be
demonstrated in all the circumstances, but don't think



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1 for a moment on the assumption that this has elements
2 that ought to be encouraged in private enterprise, that
3 the initiative should be encouraged and rewarded
4 notwithstanding or rather on the basis of those
5 assumptions you must try to obtain a greater general
6 satisfaction from the parties who are essential to the
7 accomplishment of it.

8 MR. ADAMS: That is right, but I insist
9 again to the point of being perhaps boring that the
10 employer's role in collective bargaining in offering
11 intelligent resistance to the demands of workers is
12 just as important as the functions of unions.

13 THE COMMISSIONER: I don't think there
14 is anything wrong with that. I don't think as a
15 proposition that is at all objectionable.

16 MR. ADAMS: And where we seem to get
17 fouled up is that the moment we start a strike the
18 employer is apparently supposed to collapse and stop
19 resisting, let the unions win.

20 THE COMMISSIONER: Is that the lesson
21 of history of these things?

22 MR. ADAMS: That is the lesson of
23 history, that is the lesson of The Labour Relations Act
24 with its lack of enforcement, that is the lesson in all
25 conciliation tribunals and unfortunately in a great many
26 arbitration tribunals that no matter what you have
27 offered or what you have done, no matter how
28 reasonable you have been, there has been a strike, so we
29 will have to give them something more.

30 MR. POLLOCK: It seems to me that the



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1 employer should be demonstrating, if that is the case.
2

3 THE COMMISSIONER: Well, we can agree
4 on this that it is a very difficult problem to solve.
5

6 MR. ADAMS: Oh, it is immensely
7 difficult. I have toyed with the idea. As you know from a
8 great many people, the common man, distressed by strikes
9 and picket line violence and all of the hullabaloo that
10 goes with it, you hear it very commonly said, "Well,
11 there must be a better way, there must be some solution.
12 What about arbitration? Why not make everybody
13 arbitrate?" And even in some jurisdictions, Australia
14 for example, they have made a serious effort to have
15 compulsory arbitration through labour courts and so on.
16 One of the great difficulties which you encounter if
17 you visualize no more bargaining, just arbitration, is
18 what standards are you going to apply to determine these
19 purely economic disputes?

20 THE COMMISSIONER: Don't you think that
21 standards can be conceived?

22 MR. ADAMS: You have to create the
23 standards.

24 THE COMMISSIONER: What do you mean by
25 "create" them? You have to infer them from facts.

26 MR. ADAMS: True, but you see, in the
27 kind of arbitration tribunals that we have in hospitals
28 and these situations, firefighters and so on, it is
29 quite common for these tribunals ---

30 THE COMMISSIONER: That is not what
they have in Australia.

MR. ADAMS: No, but I say here where we



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1 have this partial arbitration where do they get their
2 standards? They look to the settlements that have been
3 made by industry in the locality and they say, "Well,
4 now, this company pays so much, this company pays so
5 much, the average reached is so much and therefore some
6 similar yardstick should be applied to the salaries of
7 policemen and firemen". I can't blame them for this.
8 But those standards that they are using are achieved by
9 workers in the collective bargaining process using the
10 strike as a weapon to force them up.

11 THE COMMISSIONER: Do you think it is
12 beyond the intelligence of human beings to arrive at
13 methods of criteria, of standards, whatever you may call
14 them, guidelines, guiding conditions which will
15 accomplish something more satisfactory or equally
16 satisfactory to the conclusion of these problems through
17 strikes?

18 MR. ADAMS: No, I think that even a
19 partially just result would be better accomplished
20 through arbitration.

21 THE COMMISSIONER: Do you think the
22 human being is capable through what we call average
23 intelligence to reach that?

24 MR. ADAMS: I don't think in this
25 country we could accomplish that because of our problems
26 of jurisdiction, provincial jurisdiction as against
27 Dominion jurisdiction, et cetera.

28 THE COMMISSIONER: How should that
29 enter into it? The Province of Ontario has its own
30 problems and is confined to its own domain.



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1
2 MR. ADAMS: Unless the Dominion
3 government followed suit you would have a fair number
4 of cases in Ontario which would be beyond our laws.
5

6 THE COMMISSIONER: But disregarding
7 that and supposing we are an independent state do you
8 think the people of Ontario have the possibility of
9 sufficient intelligence to anticipate the cause or the
10 result of strikes and one thing and another and to
11 adopt them at the outset?

12 MR. ADAMS: I think so, I think it
13 could be done, but you will come back, of course, to
14 the problem: What are you going to do if a particular
15 group of workers refuses to accept the arbitration
16 award?

17 THE COMMISSIONER: Before you get to
18 that will you let me have your views on how that can be
19 reached first? What things are necessary?

20 MR. ADAMS: I think first of all you
21 would have to have a much greater degree of control
22 over unions than you now have. My own thought is that
23 to suddenly move from where we are into an era in which
24 we would have arbitration ----

25 THE COMMISSIONER: I would ask you
26 how are you going to take those preparatory and
27 ultimate steps to reach this level of intelligence by
28 which we can anticipate the results of strike and say,
29 "Here is the solution"? Now, you say we have the
30 intelligence to do it. What are the essential steps or
conditions of establishing that level of intelligence?

MR. ADAMS: I think perhaps the scheme



1 that I have outlined here is about the best answer I
2 could give to that. I suggest that you license all
3 unions, that they should be required to bargain as they
4 are now and when bargaining ---

5 THE COMMISSIONER: What about
6 education? Can you educate men into a greater apprecia-
7 tion of the factors that are to be taken into account in
8 the economic government of the country?

9 16/RV/SS MR. ADAMS: I am afraid I would have
10 to say it is hopeless.

11 THE COMMISSIONER: Why is it hopeless?
12 Education in the first place of strengthening the mind,
13 in the second place of becoming familiar with every
14 aspect so far as human beings can accomplish the
15 solution of these problems, of the interests of the
16 state, of the ultimate purposes of living together in
17 a community.

18 MR. ADAMS: Education is wonderful, but
19 it would take years to even bring the young people up
20 in that area. The people who are now protagonists in
21 collective bargaining cannot be sent back to school or
22 be educated.

23 THE COMMISSIONER: Well, then, when you
24 say it can be achieved you really don't mean what you
25 say.

26 MR. ADAMS: That is taking a different
27 view. I thought you meant can we find people with
28 sufficient intelligence to sit down and devise solutions
29 to each dispute as it arises and impose it on the parties
30 without striking.



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1 THE COMMISSIONER: I mean can this in
2 the course of time be achieved in the Province of Ontario?

3 MR. ADAMS: In the course of time, yes,
4 I think so.

5 THE COMMISSIONER: What time?

6 MR. ADAMS: Probably 50 years.

7 THE COMMISSIONER: That is the best
8 time?

9 MR. ADAMS: I would think it would take
10 that long.

11 THE COMMISSIONER: You have a very low
12 opinion of the intelligence of your compatriots.

13 MR. ADAMS: I have some idea of the
14 resistance to the idea which you would encounter.

15 THE COMMISSIONER: That resistance,
16 is that confined to one group or to both?

17 MR. ADAMS: Both; both parties do not
18 want to be told how to settle their disputes.

19 THE COMMISSIONER: As an intelligent
20 man, what do you think of that "don't wanting"; is that
21 in itself intelligent?

22 MR. ADAMS: In most cases I think it
23 is because, you see --- again I can't give you an
24 exact situation, but my impression is that about 90 to
25 95% of all these collective bargaining situations are
26 settled peaceably and amicably and satisfactorily.

27 THE COMMISSIONER: But that ought to be
28 a further justification for your view that it can be
29 done and can be done in much less than 50 years.

30 MR. ADAMS: The problem is what do you



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1 do about the other 5%?

2 THE COMMISSIONER: Then the 5% is
3 going to ruin a civilization because it becomes an
4 impossibility?

5 MR. ADAMS: That is the tragedy of it.

6 THE COMMISSIONER: It seems to me you
7 are giving away a great deal.

8 MR. ADAMS: A great majority of
9 people are sound good citizens trying to do a very good
10 job.

11 THE COMMISSIONER: What do you suppose
12 arouses the antagonism so fiercely?

13 MR. ADAMS: Well, I don't think there
14 is such fierce antagonism, actually. They are excellent
15 people in the art of propaganda and when they want to
16 make a show they do it.

17 THE COMMISSIONER: On your view now,
18 and as it has been exemplified by your example, it can
19 be a rather crude method of demonstration.

20 MR. ADAMS: Picketing, of course, is
21 a tradition which would be very hard to break. I am
22 sure that most unions would be amazed to read my
23 suggestion here that picketing as a means of
24 communicating information is obsolete. I don't think
25 they have even thought about it.

26 THE COMMISSIONER: They have not
27 thought about the effective function of communicating
28 information?

29 MR. ADAMS: They never thought of
30 whether there is any substitute for it, or should there



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1 be?

2 THE COMMISSIONER: I don't think you
3 have thought of the idea of forbidding strikebreaking.
4 So, the failure to think of these ideas is not confined
5 to any group. As a matter of fact, that is why we have
6 been discussing it here to see if you can suggest some
7 new ideas.

8 MR. ADAMS: I don't think anyone can
9 say that I have not thought of the idea. I have thought
10 about it and rejected it as being totally unwarranted.

11 THE COMMISSIONER: I agree you have
12 endeavoured and without offence, if I may say so, to
13 give some new ideas and that is what I think the present
14 situation calls for.

15 MR. ADAMS: I don't want to be
16 portrayed here as one who says picketing must be
17 abolished. I have no objection to picketing if it is
18 confined within the limits originally contemplated.
19 I have no objection even in the scheme of administration
20 I have set up here if in some strikes they give
21 permission to picket peaceably, quietly and in limited
22 numbers. I think the placarding of the premises
23 officially would be an effective substitute, and perhaps
24 many unions would welcome it as a relief from the onerous
25 task of having to picket. But, I would be quite happy
26 to see them use both methods. But when they say, "We
27 are going to picket en masse, without limit, and we
28 don't want anybody interfering with us, not even the
29 courts", I say you have gone too far. A union is a
30 means to an end, it is not an end in itself. A union



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1 must function within the bosom of the state, and I am
2 not using my own words there.

3 THE COMMISSIONER: But you must say
4 also that not only the union but the management must
5 operate within the structure of the state.

6 MR. ADAMS: Management must operate
7 within the law too. This is where the great distinction
8 between us lags. The unions have always contended that
9 they are free to operate outside the law when it suits
10 their purposes.

11 THE COMMISSIONER: Do you think so?

12 MR. ADAMS: Yes. That is unfortunate,
13 Mr. Commissioner. My experience with them goes back to
14 the days when we had no labour relations legislation.
15 I sat with the Minister of Labour for five consecutive
16 years in this province and heard delegations of trade
17 union people coming up petitioning annually for a Labour
18 Relations Act, and all they wanted at that time was a
19 simple statement "Make unions lawful entities".

20 THE COMMISSIONER: What is the
21 aim of democratic government?

22 MR. ADAMS: Maintain order, keep us out of
23 wars and many other things.

24 THE COMMISSIONER: I thought it was
25 improving a lot of human beings too.

26 MR. ADAMS: That is an incidental
27 result, I think.

28 THE COMMISSIONER: Is that an
29 incidental result or one of the objects of a democratic
30 government?



1 MR. ADAMS: By and large I think we
2 can improve our own lot rather than governments doing
3 it for us.

4 THE COMMISSIONER: You say you can
5 improve your own lot independently from being a member
6 of the community?

7 MR. ADAMS: No, you must always
8 function as a member of society. If I may make the
9 point, they were asking for this simple law and there
10 were people in the movement who were advising them this
11 was a mistake, you should not take on legal entities
12 because it would give them responsibilities, but
13 nevertheless they asked. Finally one year the Minister
14 of Labour said to me, "Will you draft the labour
15 relations statute for these people?", and I did. They
16 liked the first part of it which gave them legal status.
17 They did not like the part which gave them some
18 responsibility.

19 THE COMMISSIONER: I suppose that is
20 a human weakness.

21 MR. ADAMS: But I took the position
22 "If you wish to become a lawful organization, that is
23 fine, but then you must act like any other lawful
24 organization: You must obey the law". I had only
25 prescribed for them a simple form of registration so
26 that we could keep track of them and know who they were,
27 and protect their members from fraud and bad
28 bookkeeping and all that sort of thing, but they did
29 not like it. Now, they have actually got a statute
30 which gave them --- oh, it became lawful to join a union



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1 as if it was not lawful before; of course, it was
2 lawful before. You find throughout the statute some of
3 the greatest nonsense: Section 3 says that every person
4 is free to join a trade union of his own choice. He
5 was always free to do that. He did not need this to
6 say it. Then they say in the very next section ---

7 MR. POLLOCK: Except when you sign a
8 yellow-dog contract.

9 MR. ADAMS: Well, that wasn't very
10 enforceable. The next section then says that every
11 person is free to join his employer's association.
12 Thanks very much, but we were always free to do that.

13 THE COMMISSIONER: But you could join
14 at the cost of penalty.

15 MR. ADAMS: There was never any
16 penalty for joining an employer's ----

17 THE COMMISSIONER: Oh, employer --- I
18 see.

19 MR. ADAMS: Wherever they speak of
20 strike they speak of lockout.

21 THE COMMISSIONER: You don't suggest
22 for the moment there wasn't the utmost resistance of
23 management to the promotion of unionism?

24 MR. ADAMS: At one time, yes.

25 THE COMMISSIONER: The effect of that
26 has not died out yet.

27 MR. ADAMS: Many, many mistakes were
28 made in this Act. One of the curious ones --- and I
29 am not protesting about it, but I draw it to your
30 attention as one of the anomalies: There is Section 5⁴



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1 which is intended in general terms to prevent strikes
2 until conciliation has taken place, so they attack the
3 problem in two parts. First they say where a collective
4 agreement is in operation no employee shall strike
5 (period). Then they say where there is no collective
6 agreement in operation, which takes in all the other
7 situations, no employee shall strike, et cetera, until
8 conciliation or mediation has taken place. Now, observe
9 that this takes away by statute the right of an
10 unorganized man to strike and it does not give it back
11 to him at any time, because he cannot get mediation
12 and conciliation. He has to have a union to do that.

13 THE COMMISSIONER: That is an
14 interpretation of the Act ---- has it ever been held
15 in the courts of this province?

16 MR. ADAMS: Nobody has ever raised the
17 matter and probably nobody ever will. I mention the
18 matter and it is merely academic. But there are many
19 places in which you can detect the notion that they are
20 thinking about the problems of unions rather than the
21 problems of workers. This is a fatal defect.

22 Well, I am at your disposal now.

23 THE COMMISSIONER: Well, Mr. Adams, we
24 are very much obliged to you for giving your views in
25 such fullness and so much honesty of statement.

26 MR. ADAMS: I am sure there are many
27 people who don't agree with me, but I have had some 25
28 years of experience in this and I fully recognize the
29 rights of people to disagree with me, and I would be
30 happy if at any time in the course of your inquiry I



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1 can be of any assistance to you on any subsidiary
2 problem, if you would like to ask for it, I would be
3 perfectly happy to do anything you might wish.
4

5 THE COMMISSIONER: Thank you, Mr.
6 Adams. The Commission will stand adjourned until
7 tomorrow morning at ten o'clock.
8

9 ----Adjournment.
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